

Chaturvedi & Pithisaria's INCOME TAX LAW

THIRD EDITION

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PUBLISHERS' NOTE

The time-span for completion of volumes 1 to 6 ranges over about 5 years. The laws—legislative as also judge-made—these days, more particularly those concerning direct taxes, are ever “changing”. Not only the incessant changes have been effected through legislative process, but also a perennial flow of judicial pronouncements has poured in unabated. It was, therefore, thought immensely desirable to update the legal discussion in all the volumes 1 to 6 by bringing out a supplementary volume 7, which has kept the same style and features throughout. This volume 7 is self-contained and self-comprehensible one. The Authors have left no stone unturned for enhancing the usefulness of the earlier volumes by incorporating, in this volume 7, every relevant material at the appropriate place.

The much-awaited Direct Tax Laws (Amendment) Bill, 1987, was introduced in Lok Sabha and was hurriedly passed by both Houses of Parliament. It was only on 24th January, 1988, that that Bill was given assent to by the President and it has become Act No. 4 of 1988.

To increase its utility immensely for its readers, the Authors have done their best to thoroughly and exhaustively annotate the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), and the same has been incorporated in this volume so as to apprise its readers of the latest development in the legislative process.

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 CIT v Ahmedabad Kaiser-I-Hind Mills Co. Ltd., (1981) Taxation 63(3)-125 (Guj)=
 (1983) 141 ITR 472 (Guj) .. [1278, 1416, 1522]
 CIT v Ahmedabad Mfg. & Calico Ptg. Co., (1981) Taxation 63(3)-154 (Guj)=
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 CIT v Ajit Singh Bhagat Singh, (1984) 18 Taxman 323 (Raj)=(1985) 151 ITR 696
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 CIT v Ajit Spices, (1986) 52 CTR (Ker) 162=(1987) 165 ITR 755 (Ker) .. [5357]
 CIT v Alagappa Cotton Mills, (1984) Taxation 73(3)-200 (Mad)=(1984) 149 ITR
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- CIT v Airmchand Topandas, (1986) 50 CTR (Bom) 207=(1987) 163 ITR 511 (Bom) .. [4491]
- CIT v Anand Transport Co. Pr. Ltd., (1982) Tax LR 53 (MP)=(1982) 137 ITR 300 (MP) .. [3026]
- CIT v Angappa Chettiar (J.K.K.), (1982) 27 CTR (Mad) 123=(1983) 144 ITR 775 (Mad) .. [1843]
- CIT v Ashwin M. Patel, (1981) Taxation 63(3)-278 (Guj)=(1983) 144 ITR 566 (Guj) .. [1685]
- CIT (Addl.) v Avtar Mohan Singh (Mrs.), (1982) Taxation 64(3)-115 (Del)=(1982) 136 ITR 645 (Del) .. [1705, 1709, 1712]
- CIT v Baburam, (1982) Taxation 64(3)-100 (Del)=(1982) 138 ITR 311 (Del) .. [1387]
- CIT (Addl.) v Bal Kishan Dass Hari Kishan Dass, (1984) 17 Taxman 309 (Del)=(1984) 149 ITR 202 (Del) .. [3624]
- CIT v Balakrishna Rao (K.), (1983) Taxation 69(3)-136 (Mad)=(1983) 143 ITR 651 (Mad) .. [3263, 3265]
- CIT v Balasubramaniam & Bros. (B.A.), (1984) 40 CTR (Mad) 217=(1985) 152 ITR 529 (Mad), special leave petition granted by the Supreme Court: (1986) 159 ITR (St.) 108 (SC) .. [4907, 4930]
- CIT v Basanta Kumar Agarwalla, (1981) 25 CTR (Gauh) 117=(1983) 140 ITR 418 (Gauh) .. [1843]
- CIT v Bhagat Singh, (1983) 14 Taxman 138 (Pat)=(1983) 142 ITR 836 (Pat) .. [4926, 4932]
- CIT v Bhagwan Das Gopal Prasad, (1980) 15 CTR (Pat) 296=(1983) 139 ITR 430 (Pat) .. [278]
- CIT (Addl.) v Bhatia Mahajan Construction, (1984) 17 Taxman 326 (Raj)=(1984) 149 ITR 148 (Raj) .. [3565]
- CIT v Bhoora Mal Dau Dayal, (1984) 41 CTR (Del) 73=(1985) 154 ITR 588 (Del) .. [3624]
- CIT (Addl.) v Bihar State Co-operative Marketing Co. Ltd., (1986) 52 CTR (Pat) 46=(1987) 163 ITR 450 (Pat) .. [4934]
- CIT v Bihar State Road Transport Corporation Ltd., (1986) 51 CTR (Pat) 356=(1986) 162 ITR 504 (Pat) .. [4983]
- CIT v Bilaspur Spinning Mills Industries Ltd., (1985) Tax LR 1423 (Cal)=(1986) 157 ITR 237 (Cal) .. [4512]
- CIT v Birla (K.K.), (1982) 26 CTR (Cal) 51=(1981) Tax LR 1295=(1982) 137 ITR 126 (Cal) .. [1601, 1852]
- CIT v Brakes India Ltd., (1980) 14 CTR (Mad) 259=(1982) 136 ITR 322 (Mad) .. [1323]
- CIT v Brij Bhushan Lal Suresh Kumar, (1986) 24 Taxman 341 (Punj)=(1986) 159 ITR 825 (Punj) .. [4443]
- CIT v Central Agency Ltd., (1982) 31 CTR (Bom) 333=(1983) 144 ITR 105 (Bom) .. [2305]
- CIT v Chamarchi Tea, Textile & Engineering Industries Ltd., (1982) 26 CTR (Cal) 11=(1982) 137 ITR 281 (Cal) .. [1355]
- CIT v Chandra Prabha Pateria (Smt.), (1982) 31 CTR (MP) 281=(1984) 145 ITR 578 (MP) .. [2859]
- CIT v Chhedi Lal, (1984) 42 CTR (All) 329=(1987) 163 ITR 304 (All) .. [4564]
- CIT v Chickanna Silk House, (1984) 19 Taxman 567 (Mad)=(1987) 163 ITR 145 (Mad) .. [4928]
- CIT v Chintamani Saran Nath Sahdeo (Maharaja), (1980) 15 CTR (Pat) 300=(1982) 133 ITR 658 (Pat) .. [644, 722]
- CIT v Clive Mills Co. Ltd., (1982) 27 CTR (Cal) 300=(1984) 148 ITR 14 (Cal) .. [1653]

- CIT v Confeitaria De Janeiro, (1983) 15 Taxman 331 (Bom)=(1984) 150 ITR 502 (Bom) .. [3518]
- CIT v Damoh Co-operative Marketing Society Ltd., (1982) 30 CTR (MP) 314=(1984) 145 ITR 572 (MP) .. [2859]
- CIT (Addl.) v Devda (M.J.), (1976) Tax LR 456 (AP)=(1977) 109 ITR 484 (AP) .. [4875]
- CIT v Devichand Pan Mal, (1986) 24 Taxman 663 (Raj)=(1986) 160 ITR 545 (Raj) .. [4212, 4287]
- CIT v Dhanraj Dugar, (1982) Tax LR 367 (Cal)=(1982) 137 ITR 350 (Cal) .. [1675]
- CIT v Digvijay Cement Co. Ltd. (Shree), (1982) Taxation 64(3)-20 (Guj)=(1983) 144 ITR 532 (Guj) .. [1282, 1288, 1420, 2160]
- CIT v Donde (R.V.), (1986) 51 CTR (Bom) 299=(1987) 163 ITR 210 (Bom) .. [4948]
- CIT v Duncan Bros. & Co. Ltd., (1981) 23 CTR (Cal) 240=(1983) 140 ITR 335 (Cal) .. [1520]
- CIT v Ethirap (Estate of Shri V. L.), (1980) 16 CTR (Mad) 238=(1982) 136 ITR 881 (Del) .. [3890]
- CIT v Ethiraj (Estate of Shri V. L.), (1980) 16 CTR (Mad) 238=(1982) 136 ITR 12 (Mad) .. [566]
- CIT v Farahatullah (M.), (1985) 22 Taxman 293 (AP)=(1985) 151 ITR 763 (AP) .. [4860]
- CIT v Fernandez (Mrs. T.), (1982) 26 CTR (Bom) 283=(1982) 136 ITR 180 (Bom) .. [1867]
- CIT v Forbes, Ewart & Figgis (P.) Ltd., (1981) 24 CTR (Ker) 87 (FB)=(1982) 138 ITR 1 (Ker—FB), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 7 (SC) .. [1518, 1523]
- CIT v Foresole Ltd., (1984) 41 CTR (Raj) 47=(1985) 153 ITR 349 (Raj) .. [3429]
- CIT v Freyssinet Prestressed Concrete Co. Ltd., (1982) 30 CTR (Bom) 211=(1983) 143 ITR 197 (Bom) .. [4510]
- CIT v Gajraisingh & Co., (1983) 37 CTR (MP) 242=(1984) 149 ITR 339 (MP) .. [3565]
- CIT v Ganges Mfg. Co. Ltd., (1981) 23 CTR (Cal) 290=(1982) 133 ITR 404 (Cal) .. [1050]
- CIT v Gargiben (Trustees of Miss), (1980) 18 CTR (Bom) 352=(1981) 130 ITR 479 (Bom) .. [2457]
- CIT (Addl.) v Ghai Lime Stone Co., (1982) 28 CTR (MP) 37=(1983) 144 ITR 140 (MP) .. [1918-1919]
- CIT v Ghewarchand Kamalkumar, (1975) Tax LR 1020 (Ori)=(1977) 108 ITR 398 (Ori) .. [4449]
- CIT v Ghosh (Mrs. A.), (1981) 22 CTR (Cal) 318=(1983) 139 ITR 119 (Cal) .. [788, 790, 804]
- CIT v Gillanders Arbuthnot & Co. Ltd., (1981) Tax LR (NOC) 111 (Cal)=(1983) 139 ITR 337 (Cal) .. [804]
- CIT v Gordhanbhai Jethabhai, (1983) 31 CTR (Guj) 244=(1983) 142 ITR 84 (Guj) .. [2482]
- CIT v Gourepore Co. Ltd., (1981) Tax LR 1136 (Cal)=(1982) 135 ITR 606 (Cal) .. [1594]
- CIT v Govindlal Mathurbhai Oza, (1981) Tax LR 1914 (Guj)=(1982) 138 ITR 711 (Guj) .. [1674]
- CIT v Govindram Bros. Pr. Ltd., (1982) 26 CTR (Bom) 262=(1983) 141 ITR 626 (Bom) .. [1486]
- CIT v Granulated Fertilizers & Feeds Pr. Ltd., (1981) Taxation 62(3)-1 (Guj)=(1982) 137 ITR 400 (Guj) .. [1185]

- CIT v Gulab Das, (1985) Taxation 79(1)-9 (Raj)=(1986) 159 ITR 24 (Raj)
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- CIT v Gupta & Sons Pr. Ltd., (1983) Tax LR 156 (MP)=(1984) 146 ITR 506
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- CIT v Gurinder Singh Karion, (1981) 23 CTR (Punj) 8=(1982) 133 ITR 300
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- CIT v Hasanali Khanbhai & Sons, (1974) Taxation 36(3)-4 (Guj)=(1987) 165 ITR
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- CIT v Hindustan Antibiotics Ltd., (1982) 26 CTR (Bom) 129=(1982) 137 ITR 42
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- CIT v Hindustan General Industries Ltd., (1981) 23 CTR (Del) 73=(1982) 137
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- CIT v Hindustan Pilkington Glass Works, (1981) 24 CTR (Cal) 327=(1983) 139
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- CIT v Hirji Bharmal, (1983) Taxation 69(1)-15 (MP)=(1983) 34 CTR (MP)
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- CIT (Addl.) v Horilal Kunj Behari Lal, (1975) Tax LR 855 (All)=(1977) 106
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- CIT v Hoshiarpur Express Transport Co. Ltd., (1986) 52 CTR (Punj) 103=(1986)
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- CIT v ICI (India) Pr. Ltd., (1978) Tax LR 711 (Cal)=(1983) 139 ITR 105 (Cal)
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- CIT v Imtiaz U. Digmar, (1986) 51 CTR (Guj) 175=(1987) 163 ITR 229 (Guj)
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- CIT (Addl.) v India United Mills Ltd., (1982) 27 CTR (Bom) 207=(1983) 141
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- CIT v Indra Jitendra Narain Singh, (1973) Taxation 35(3)-89 (Pat)=(1974) 95
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- CIT v Industrial Perfumes Ltd., (1982) 28 CTR (Bom) 199=(1982) 138 ITR 644
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- CIT v Jagabandhu Roul, (1983) Tax LR 727 (Ori)=(1984) 145 ITR 153 (Ori)
.. [3126, 3145, 3148]
- CIT v Jagadamba Kumari Devi (Rani), (1983) Tax LR 258 (Cal)=(1983) 143 ITR
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- CIT v Jhunjhunwala (K.L.), (1981) 21 CTR (Cal) 253=(1983) 139 ITR 371
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- CIT v Kalinga Otto (P.) Ltd., (1981) 25 CTR (Cal) 1=(1983) 139 ITR 710 (Cal)
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- CIT v Kamani Engineering Corporation Ltd., (1985) Taxation 79(3)-272 (Bom)=
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- CIT v Kanoria (M.D.), (1981) 22 CTR (Bom) 262=(1982) 137 ITR 137 (Bom)
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- CIT v Kathawala & Co. (E.H.), (1984) 38 CTR (Bom) 194=(1985) 151 ITR 348
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- CIT v Keshardeo Bubna, (1983) 13 Taxman 87 (Cal)=(1984) 146 ITR 113 (Cal)
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- CIT v Khandelwal Mining & Ores Pr. Ltd., (1981) 23 CTR (Bom) 104=(1983) 140
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- CIT v Khateeb Mahmood, (1976) CTR (Mad) 232=(1977) 109 ITR 408 (Mad)
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- CIT v Khosla Plastics Pr. Ltd., (1982) 9 Taxman 137 (Bom)=(1982) 138 ITR 455
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- CIT v Kinema Reinforced Plastics, (1984) 39 CTR (Karn) 7=(1985) 152 ITR 216
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- CIT v Kishore Trading Co. Ltd., (1981) 23 CTR (Cal) 218=(1982) 138 ITR 527. (Cal) .. [1686]
- CIT v Kohli & Co. (W.L.) (wrongly stated as W.R. Kohli), (1985) Tax LR 1295 (Del)=(1987) 165 ITR 492 (Del) .. [4419]
- CIT v Kolbeong Co. Ltd., (1983) 12 Taxman 141 (Cal)=(1983) 143 ITR 512 (Cal) .. [2847]
- CIT v Kulsum J.G.Padamsee (Smt.), (1985) Taxation 79(3)-248 (Bom)=(1986) 161 ITR 704 (Bom) .. [4318]
- CIT v Kumaraswamy (V.), (1985) 47 CTR (Mad) 336=(1987) 163 ITR 252 (Mad) .. [4573]
- CIT v Kunj Lal Kanhaiya Lal (Dewan), (1986) 51 CTR (Pat) 238=(1987) 164 ITR 284 (Pat) .. [5017]
- CIT v Land Corporation of Bengal Pr. Ltd., (1982) Taxation 65(3)-38 (Cal)=(1982) 138 ITR 63 (Cal) .. [4535]
- CIT v Lakhtar Cotton Press Co. P. Ltd., (1983) Taxation 68(3)-21 (Guj)=(1983) 142 ITR 503 (Guj) .. [2433]
- CIT v Lalubhai B. Patel & Co., (1981) 21 CTR (MP) 172=(1983) 139 ITR 832 (MP) .. [1442]
- CIT v Lekhraj & Sons, (1984) 40 CTR (Mad) 238=(1985) 153 ITR 535 (Mad) .. [4418]
- CIT v M. P. Bidi Leaves Co., (1985) Taxation 78(3)-338 (MP)=(1985) 154 ITR 182 (MP) .. [4374]
- CIT v Madan Lal Jain, (1982) Taxation 64(3)-10 (Del)=(1982) 136 ITR 409 (Del) .. [1188]
- CIT (Addl.) v Madan Lal Jain & Sons, (1982) 9 Taxman 126 (Del)=(1983) 140 ITR 200 (Del) .. [1685]
- CIT v Mahendra & Co. Ltd., (1986) 24 Taxman 575 (Raj)=(1987) 163 ITR 316 (Raj) .. [4433]
- CIT v Mahendrakumar Mitharmal, (1982) Taxation 64(1)-28 (Guj)=(1983) 140 ITR 300 (Guj) .. [1868]
- CIT v Malayala Manorama & Co. Ltd., (1983) Tax LR 109 (Ker)=(1983) 143 ITR 29 (Ker) .. [2492]
- CIT v Mansurali Valibhai Dudhani, (1981) Taxation 62(3)-10 (Guj)=(1984) 148 ITR 526 (Guj) .. [1917]
- CIT v Mariappa Muthiriyar & Sons, (1984) Tax LR 466 (Mad)=(1985) 154 ITR 466 (Mad) .. [3514]
- CIT v McDill & Co. Pr. Ltd. (R.), (1982) Taxation 67(3)-18 (Cal)=(1983) 144 ITR 415 (Cal) .. [2395]
- CIT v Meenakshi Bankers, (1984) Taxation 73(3)-252 (Mad)=(1985) 152 ITR 132 (Mad) .. [3624]
- CIT (Addl.) v Mewa Lal Sankatha Prasad, (1978) CTR (All) 453=(1979) 116 ITR 356 (All) .. [4948]
- CIT v Mir Osman Ali Bahadur (Nawab Sir), (1974) Tax LR 86 (AP)=(1985) 153 ITR 514 (AP) .. [1810, 1818]
- CIT v Mishra (R.L.), (1981) 25 CTR (Bom) 164=(1984) 147 ITR 424 (Bom) .. [1802, 1805]
- CIT v Mithalal Ashok Kumar, (1985) Taxation 76(3)-168 (MP)=(1986) 158 ITR 755 (MP) .. [4387]
- CIT v Mukanddas Vishnukumar, (1974) Tax LR 197 (Raj)=(1976) 102 ITR 613 (Raj) .. [4840]
- CIT v Murarilal Budhia, (1979) 8 CTR (Pat) 343=(1983) 139 ITR 410 (Pat) .. [1671]
- CIT v Namlabhai Bhanabhai, (1986) 51 CTR (Guj) 27=(1987) 163 ITR 189 (Guj) .. [4930]

- CIT v Nandiniben Narottamdas (Smt.), (1982) 26 CTR (Guj) 200=(1983) 140 ITR 16 (Guj) .. [1802, 1805]
- CIT v Narang Dairy Products, (1985) 49 CTR (All) 311=(1986) 159 ITR 243 (All) .. [4511]
- CIT v Navinchandra Tribhovandas Shah, I.T. Reference No. 40 of 1971=(1987) 165 ITR 192 (Guj) .. [3130]
- CIT v Navsari Cotton & Silk Mills, (1981) 23 CTR (Guj) 292=(1982) 135 ITR 546 (Guj) .. [1280]
- CIT v New Central Jute Mills, (1982) Tax LR 3 (Cal)=(1982) 135 ITR 736 (Cal) .. [1576, 1577]
- CIT v Nirlon Synthetic Fibres & Chemicals P. Ltd., (1981) 25 CTR (Bom) 155=(1982) 137 ITR 1 (Bom) .. [1576, 1577]
- CIT v Nizam's Charitable Trust (H.E.H. The), (1981) Tax LR 994 (AP)=(1981) 131 ITR 497 (AP) .. [567]
- CIT v Nopany Education Trust, (1985) 21 Taxman 328 (Cal)=(1986) 159 ITR 367 (Cal) .. [4385, 4404, 4468, 4497, 4503, 4530]
- CIT v Noroth Oil Mill Co. Ltd., (1982) 9 Taxman 104 (Ker)=(1983) 140 ITR 173 (Ker), special leave petition granted by the Supreme Court: (1985) 151 ITR (St.) 14 (SC) .. [1278]
- CIT v Official Trustee of West Bengal, (1981) 23 CTR (Cal) 276=(1983) 139 ITR 1 (Cal) .. [761]
- CIT v Orient Paper Mills Ltd., (1981) 23 CTR (Cal) 180=(1983) 139 ITR 763 (Cal) .. [1520]
- CIT v Oriental Co. Ltd., (1981) 25 CTR (Cal) 75=(1982) 137 ITR 777 (Cal) .. [1776]
- CIT (Addl.) v Pakco Engg. Pr. Ltd., (1982) 30 CTR (Bom) 232=(1983) 143 ITR 415 (Bom) .. [2406]
- CIT v Palaniappa Enterprises, (1984) 40 CTR (Mad) 146=(1984) 150 ITR 237 (Mad) .. [3613]
- CIT v Pandya (M. K.), (1982) 28 CTR (Bom) 181=(1982) 138 ITR 365 (Bom) .. [1842]
- CIT v Pandya (N. K.), (1982) 28 CTR (Bom) 183=(1982) 138 ITR 360 (Bom) .. [1850]
- CIT v Parmanand Bhai Patel, (1982) 27 CTR (MP) 337=(1983) 144 ITR 871 (MP) .. [3008, 3139, 3161]
- CIT v Phoenix Chemical Works Pr. Ltd., (1982) 26 CTR (Bom) 256=(1982) 138 ITR 321 (Bom) .. [1486]
- CIT v Prafulla Kumar Mallik, (1976) Tax LR 706 (Ori)=(1976) 104 ITR 648 (Ori) .. [4428]
- CIT v Prativa Devi (Smt.), (1981) 22 CTR (Cal) 339=(1982) 135 ITR 704 (Cal) .. [245]
- CIT v Prithvi Raj Daga, (1985) 45 CTR (Raj) 35=(1986) 159 ITR 193 (Raj) .. [4427]
- CIT v Provincial Farmers Pr. Ltd., (1976) Tax LR 921 (Cal)=(1977) 108 ITR 219 (Cal) .. [818]
- CIT (Addl.) v R.D. Ram Nath & Co., (1982) 28 CTR (Del) 110=(1983) 141 ITR 897 (Del) .. [1586, 1599]
- CIT v R.M. & Co., (1985) 21 Taxman 56 (AP)=(1984) 148 ITR 353 (AP) .. [4384]
- CIT v Radhaswami Satsang, (1980) 19 CTR (All) 345=(1981) 132 ITR 647 (All) .. [557, 561, 596]
- CIT v Raghumal Ashok Kumar, (1984) 39 CTR (Del) 120=(1984) 149 ITR 466 (Del) .. [3624]
- CIT v Rajesh & Co. (P.), (1984) 17 Taxman 280 (Bom)=(1985) 151 ITR 453 (Bom) .. [3889]

- CIT v Rajah (K. P. R.), (1985) Taxation 79(1)-42 (Mad)=(1987) 163 ITR 2 (Mad) .. [4497]
- CIT v Rajnandgaon Roadways Ltd., (1986) 50 CTR (MP) 159=(1987) 164 ITR 728 (MP) .. [4933]
- CIT v Ram Lal Manohar Lal, (1985) 23 Taxman 244 (Del)=(1986) 158 ITR 9 (Del) .. [4423]
- CIT v Ram Prakash Saraf, (1985) Taxation 79(3)-325 (MP)=(1986) 160 ITR 860 (MP) .. [5024]
- CIT v Ramakrishna Motor Transport (Sri), (1983) Tax LR 658 (AP)=(1983) 144 ITR 797 (AP) .. [3127, 3134, 3143]
- CIT v Ramalakshmi Reddy (M.), (1980) 19 CTR (Mad) 207 (actually 270)=(1981) 131 ITR 415 (Mad) .. [428]
- CIT v Ramchand & Sons Sugar Mills Pr. Ltd., (1983) Tax LR 335 (All)=(1984) 145 ITR 588 (All) .. [2398, 2400]
- CIT (Addl.) v Ramchand Daryanomal, (1982) 28 CTR (MP) 45=(1982) 138 ITR 666 (MP) .. [1556]
- CIT v Rao & Co., (1986) 24 Taxman 452 (Bom)=(1986) 161 ITR 806 (Bom) .. [5299]
- CIT v Ravalgaon Sugar Farm Ltd., (1982) 27 CTR (Bom) 223=(1982) 138 ITR 235 (Bom) .. [1305, 1441]
- CIT v Rijhumal Relumal, (1981) 20 CTR (MP) 38=(1983) 139 ITR 897 (MP) .. [1041]
- CIT v Saharia Krishivan Pratisthan Ltd., (1980) Tax LR 1295 (Gauh)=(1981) 130 ITR 383 (Gauh) .. [4442-4443]
- CIT v Saraswati Industrial Syndicate Ltd., (1981) 23 CTR (Punj) 6=(1982) 136 ITR 758 (Punj) .. [941, 1449]
- CIT v Sardar Store, (1986) 25 Taxman 219 (Punj)=(1986) 161 ITR 53 (Punj) .. [4926, 4928]
- CIT v Sat Parkash, (1980) Taxation 59(1)-2 (Punj)=(1980) 18 CTR (Punj) 255 .. [4440]
- CIT v Sawaran Singh Balbir Singh, (1981) 20 CTR (Punj) 131=(1982) 136 ITR 595 (Punj) .. [1580]
- CIT v Sen Mukherjee & Co., (1985) 21 Taxman 309 (Cal)=(1986) 159 ITR 793 (Cal) .. [4929, 4932]
- CIT v Shah Construction Co. Ltd., (1982) 30 CTR (Bom) 245=(1983) 142 ITR 696 (Bom) .. [2345, 2432]
- CIT v Shanta Electrical Industries (name given as Shanta Electrical Industries v ITO), (1986) 52 CTR (Del) 217=(1986) 160 ITR 774 (Del) .. [4868]
- CIT v Shah Doshi & Co., (1981) 23 CTR (Guj) 307=(1982) 133 ITR 23 (Guj) .. [797]
- CIT v Shri Synthetics Ltd., (1984) 39 CTR (MP) 72=(1985) 151 ITR 634 (MP) .. [3794]
- CIT v Shriram Prayagdas and Mahadeo Prasad, (1982) 27 CTR (MP) 155=(1983) 144 ITR 883 (MP) .. [1464]
- CIT v Sidhwa (Smt. T. P.), (1981) 21 CTR (Bom) 146=(1982) 133 ITR 840 (Bom) .. [626, 628, 629, 631, 725]
- CIT (Addl.) v Sitaram Rathi, (1984) Taxation 74(1)-16 (Pat)=(1984) 19 Taxman 79 (Pat) .. [3585]
- CIT v Sobhagmal Jorawar Mal, (1986) 24 Taxman 231 (Raj)=(1986) 162 ITR 720 (Raj) .. [4432]
- CIT v Southern Estates Pr. Ltd., (1982) Tax LR 172 (Cal)=(1982) 136 ITR 846 (Cal) .. [1285]
- CIT v Standard Mercantile Co., (1985) Taxation 79(3)-277 (Pat)=(1986) 160 ITR 613 (Pat) .. [4882]

- CIT v Sugauli Sugar Works P. Ltd., (1981) 23 CTR (Cal) 226=(1983) 140 ITR 286 (Cal) .. [1544]
- CIT (Addl.) v Sunder Lal Banwari Lal, (1984) 39 CTR (Del) 112=(1985) 156 ITR 617 (Del) .. [3598]
- CIT v Suraj Bhan, (1986) 24 Taxman 629 (Punj)=(1986) 159 ITR 709 (Punj) .. [4897, 4926]
- CIT v Sutna Stone & Lime Co. Ltd., (1981) Tax LR 1869 (Cal)=(1982) 138 ITR 37 (Cal) .. [2137]
- CIT v Tecalemit (Hind) Ltd., (1982) 26 CTR (Cal) 28=(1982) 137 ITR 285 (Cal) .. [1520]
- CIT v Tej Kumar Sethi, (1983) Taxation 69(3)-22 (MP)=(1983) 143 ITR 757 (MP) .. [3188]
- CIT v Texmaco Ltd., (1982) Tax LR 867 (Cal)=(1983) 141 ITR 531 (Cal) .. [2168]
- CIT v Thiruppani Trust (S. RM. CT. M.), (1980) 16 CTR (Mad) 254=(1982) 134 ITR 555 (Mad), special leave petition granted by the Supreme Court: (1984) 147 ITR (St.) 3 (SC) .. [567, 590]
- CIT (Addl.) v U.P. State Agro Industrial Corporation, (1981) Tax LR 673 (All)=(1982) 133 ITR 597 (All) .. [818]
- CIT v Udhoji Shrikrishnadas, (1981) 21 CTR (MP) 171=(1983) 139 ITR 827 (MP) .. [1502]
- CIT v Vakharia Cotton Traders, (1986) 50 CTR (Guj) 83=(1986) 161 ITR 441 (Guj) .. [5032]
- CIT v Vallabh Glass Works Ltd., (1981) Taxation 63(3)-146 (Guj)=(1982) 137 ITR 389 (Guj) .. [1281, 1367]
- CIT v Vasudeo Agrawalla, (1985) Taxation 79(3)-109 (Pat)=(1987) 163 ITR 142 (Pat) .. [4930]
- CIT v Venkataraman (A.), (1982) Taxation 65(3)-119 (Mad)=(1982) 137 ITR 846 (Mad) .. [1682, 1683, 1705]
- CIT v Vindeshwari Trading Corporation, (1978) CTR (All) 110=(1978) 113 ITR 791 (All) .. [4442]
- CIT (Addl.) v Vineet Virmani (Seth), (1982) Taxation 64(3)-231 (Del)=(1983) 141 ITR 595 (Del) .. [2051]
- CIT v Zenith Steel Pipes Ltd., (1982) 8 Taxman 41 (Bom)=(1982) 137 ITR 34 (Bom) .. [1608, 2168]
- CWT v Balbhadradas Bangur, (1982) Tax LR 2087 (Cal)=(1984) 148 ITR 149 (Cal) .. [2489]
- CWT v Ballabh Kumari (Smt.), (1986) 24 Taxman 396 (Raj)=(1986) 160 ITR 945 (Raj) .. [4443]
- CWT v Gaekwad (H. H. Maharaja F. P.), (1982) 28 CTR (Guj) 158=(1983) 144 ITR 304 (Guj) .. [1654]
- CWT v Geeta Kumari of Kishangarh (Raj Mata Smt.), (1986) 24 Taxman 45 (Raj)=(1987) 163 ITR 417 (Raj) .. [4432, 4868]
- CWT v Geeta Kumari (Raj Mata Smt.), (1986) 24 Taxman 316 (Raj)=(1987) 163 ITR 570 (Raj) .. [4432]
- CWT v Hasnate Burhaniyah Fidaiyah Wakf, (1983) Tax LR 825 (Bom)=(1984) 147 ITR 509 (Bom) .. [3307]
- CWT v Kalyan Singh (Rao Raja), (1986) 24 Taxman 110 (Raj)=(1987) 163 ITR 411 (Raj) .. [4432]
- CWT v Kasturbhai Mayabhai, (1986) 24 Taxman 427 (Guj)=(1987) 164 ITR 107 (Guj) .. [4661]
- CWT v Rajamma (M. V.), (1979) 10 CTR (Mad) 193=(1979) 120 ITR 132 (Mad) .. [4507]
- CWT v Sheo Kumar Dalmia, (1985) 48 CTR (Pat) 290=(1986) 159 ITR 845 (Pat) .. [4595]

CWT v Surjit Singh (Sardar), (1982) 26 CTR (Cal) 69=(1982) 138 ITR 186 (Cal)
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- CIT v Pressure Piling Co. (India) P Ltd.**, (1980) 126 ITR 333 (Bom), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 60 (SC) .. [774]
- CIT (Addl.) v Sheik Mohideen (K.S.)**, (1978) 115 ITR 243 (Mad—FB), special leave petition dismissed by the Supreme Court: (1984) 149 ITR (St.) 93 (SC) .. [1653]
- CIT v Simpson & Co.**, (1980) 122 ITR 283 (Mad), special leave petition dismissed by the Supreme Court: (1983) 141 ITR (St.) 50 (SC) .. [2171]
- CIT v South India Viscose Ltd.**, (1979) 120 ITR 451 (Mad), special leave petition dismissed by the Supreme Court: (1983) 143 ITR (St.) 60 (SC) .. [1278, 1614]
- CIT v Standard Motor Products of India Ltd.**, (1983) 142 ITR 877 (Mad), special leave petition granted by the Supreme Court: (1984) 150 ITR (St.) 82 (SC) .. [3009]
- CIT v Suessin Textile Bearing Ltd.**, (1982) 135 ITR 443 (Guj), special leave petition granted by the Supreme Court: (1986) 161 ITR (St.) 65 (SC) .. [2161]

- CIT v Travancore Chemical Mfg. Co.**, (1982) 133 ITR 818 (Ker), special leave petition dismissed by the Supreme Court: (1982) 137 ITR (St.) 13 (SC) .. [1522]
- CIT v Travancore Timbers & Products**, (1984) 149 ITR 450 (Ker), special leave petition dismissed by the Supreme Court: (1986) 161 ITR (St.) 131 (SC) .. [4349]
- CIT v Venkatachalam**, (1979) 120 ITR 688 (Mad), special leave petition granted by the Supreme Court: (1983) 141 ITR (St.) 41 (SC) .. [2240]
- CIT v Venkateswara Textiles (Sri)**, (1985) 153 ITR 687 (Mad), special leave petition granted by the Supreme Court: (1986) 159 ITR (St.) 108 (SC) .. [4930]
- DALMIA DADRI CEMENT LTD. v CIT**, (1980) 126 ITR 851 (Del), special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 11 (SC) .. [1356]
- Dashmesh Transport Co. Pr. Ltd. v CIT**, (1980) 125 ITR 681 (Pun), special leave petition dismissed by the Supreme Court: (1983) 141 ITR (St.) 46 (SC) .. [1464]
- Haji Lal Mohd. Biri Works v CIT**, (1982) 134 ITR 718 (All), special leave petition granted by the Supreme Court: (1983) 141 ITR (St.) 46 (SC) .. [1337]
- HUNGERFORD INVESTMENT TRUST LTD v ITO**, (1983) Tax LR 171 (Cal) = (1984) 146 ITR 73 (Cal), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 8 (SC) .. [3104]
- Hyderabad Deccan Cigarette Factory v CIT**, (1981) 127 ITR 460 (AP), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 61 (SC) .. [1950, 2008]
- INDIAN ALUMINIUM Co. LTD. v CIT**, (1980) 122 ITR 660 (Cal), special leave petition granted by the Supreme Court: (1983) 142 ITR (St.) 5-6 (SC) .. [2138, 2139]
- Indian Telephone Industries Ltd. v CIT**, (1979) 117 ITR 682 (Karn), special leave petition granted by the Supreme Court, (1983) 143 ITR (St.) 66 (SC) .. [1321]
- Indore Municipal Corporation v CIT**, (1981) 132 ITR 540 (MP), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 62 (SC) .. [1417]
- JOHN (M.L.) v ITO**, (1983) 139 ITR 972 (All), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 4 (SC) .. [3064, 3261]
- KIRLOSKAR ASEA LTD. v CIT**, (1979) 117 ITR 717 (Karn), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 62 (SC) .. [1614]
- Kirloskar Electric Co. Ltd. v CIT**, (1978) 115 ITR 907 (Karn), special leave petition granted by the Supreme Court: (1983) 142 ITR (St.) 8 (SC) .. [1614]
- MAHABIR PERSHAD & SONS v CIT**, (1982) 135 ITR 775 (Del), special leave petition dismissed by the Supreme Court: (1983) 143 ITR (St.) 65-66 (SC) .. [3333]

Marybong & Kyel Tea Estate Ltd. v CIT, (1981) 129 ITR 661 (Cal), special leave petition granted by the Supreme Court: (1983) 142 ITR (St.) 3 (SC) .. [1644]

NATHMAL BANKATLAL PARIKH & Co. v CIT, (1980) 122 ITR 168 (AP—FB), special leave petition granted by the Supreme Court: (1983) 140 ITR (St.) 5 (SC) .. [886, 891, 892, 1262, 1273]

PEPSU ROAD TRANSPORT CORPORATION v CIT, (1981) 130 ITR 18 (Punj), special leave petition granted by the Supreme Court: (1983) 144 ITR (St.) 12 (SC) .. [1185]

Peria Karamalai Tea & Produce Co. Ltd. v CIT, (1980) 124 ITR 899 (Ker), special leave petition granted by the Supreme Court: (1984) 144 ITR (St.) 13 (SC) .. [2491, 2938]

Punjab State Co-operative Supply & Marketing Federation Ltd. v CIT, (1981) 128 ITR 189 (Punj), special leave petition dismissed by the Supreme Court: (1983) 143 ITR (St.) 64 (SC) .. [1305]

ROHTAK & HISSAR DISTRICTS ELECTRIC SUPPLY Co. (P.) LTD. v CIT, (1981) 128 ITR 52 (Del), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 61 (SC) .. [3152]

SIVAKAMI MILLS LTD. v CIT, (1979) 120 ITR 211 (Mad), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 69 (SC) .. [1367]

Shivakantappa (H.S.) v State of Kerala, (1982) 134 ITR 481 (Ker), special leave petition granted by the Supreme Court: (1983) 144 ITR (St.) 13 (SC) .. [1407]

Sukhdayal Pahwa v CIT, (1983) 140 ITR 200 (MP), special leave petition dismissed by the Supreme Court: (1986) 160 ITR (St.) 74 (SC) .. [3078]

USHADEVI (SMT. MAHARANI) v CIT, (1981) 131 ITR 445 (MP), special leave petition dismissed by the Supreme Court: (1984) 146 ITR (St.) 2 (SC) .. [1683]

VALLIAMMAI (SMT. S.) v CIT, (1981) 127 ITR 713 (Mad—FB), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 64 (SC) .. [1684, 1760]

Vishwakarma Industries v CIT, (1982) 135 ITR 652 (Punj—FB), special leave petition granted by the Supreme Court: (1986) 159 ITR (St.) 108 (SC) .. [4925]

WATERFALL ESTATES LTD. v CIT, (1981) 131 ITR 207 (Mad) and (1981) 131 ITR 223 (Mad), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 64 (SC) .. [1306]

**AMENDMENTS EFFECTED BY
THE DIRECT TAX LAWS (AMENDMENT) ACT, 1987**

LATEST AMENDMENTS EFFECTED BY THE DIRECT TAX LAWS (AMENDMENT) ACT, 1987, FULLY AND EXHAUSTIVELY ANNOTATED

Need.—When the printing of this Volume was near-completion, abruptly on 11-12-1987, the much-awaited Bill titled “The Direct Tax Laws (Amendment) Bill, 1987” was introduced in Lok Sabha, having the following ‘STATEMENT OF OBJECTS AND REASONS’:

‘The Income-tax Act, 1961, had become quite complex due to a series of changes made over a period of twenty years. It has also become essential to increase the cost of evasion for persons trying to evade paying their taxes. In the light of the experience gained in the working of the Act the Government resolved to rewrite the direct tax laws. Accordingly, based on the recommendations of a Committee, a Discussion Paper on Simplification and Rationalisation of Direct Taxes was laid before Parliament on 14-8-1986. In the light of the response received from Members of Parliament, economists, Chambers of Commerce and industry and individual taxpayers, amendments in the Direct Tax Laws have been proposed.

2. The main objectives of the Bill and the directional changes to achieve those objectives are ‘as under:—

- (i) to simplify the law and procedures relating to direct taxes in keeping with the policy of reposing trust in the taxpayers so as to encourage voluntary compliance. It is, therefore, proposed to make a total shift from the concept of assessment of income to the concept of determination of additional tax or refund, as the case may be. In view of the proposed amendments, no assessment order will generally be required to be passed once acknowledgment of return of income is issued. However, if a return of income is scrutinised, the process of investigation will be initiated within the same financial year or within a period of six months, from the date of filing the return, whichever is later;
- (ii) to rationalise the scheme of taxation of income and to ensure that the income earned during the same period by the same category of taxpayers is subjected to tax at the same rate, it is proposed to charge income-tax uniformly in a financial year in respect of the income of the preceding year ending 31st March which happens to be the accounting year followed by a large majority of taxpayers;
- (iii) to ensure, as far as possible, taxation of real income consistent with promoting economic and social objective. It is, therefore, proposed to omit a large number of artificial deductions on the one hand, and the disallowance of business expenditure actually incurred on the other. The existing ceiling on allowance of remuneration paid to the directors and employees of the companies as also the expenses on the bonus are proposed to be revised;

- (iv) to increase the cost of avoidance and provide effective deterrence against evasion. It is now proposed to impose a mandatory additional tax upto the extent of 30 per cent. of the concealed income in the event of any concealment of income;
- (v) to make the tax law effective by preventing leakage of revenue through instrumentalities of numerous taxable entities. It is now proposed to build disincentive for formation of trusts and associations of persons only as instruments of tax avoidance, by taxing these entities at the maximum marginal rate while taking care that the expenditure on charitable objects by trusts, etc. are encouraged. Further, the interest of smaller associations of persons has been protected;
- (vi) to remove uncertainties in the matter of assessments by cutting down areas of subjective decisions of tax authorities, to ensure uniform treatment of persons similarly placed and to reduce litigation. The existing provisions which give the assessing authorities discretionary powers to levy penalties as well as interest for the same default is now sought to be replaced by a system of mandatory interest to compensate the Government for loss of revenue and also to deter the assessee from repeatedly committing the default; and
- (vii) to ensure uniformity to the extent possible in the provisions of the three direct tax laws to pave the way for enactment of a single Direct Taxes Code. The procedural provisions and the provisions dealing with jurisdiction, interest, penalties and prosecutions in the Wealth-tax Act and the Gift-tax Act are proposed to be amended so as to bring them in line with the corresponding provisions in the Income-tax Act.¹

The Bill was too-much bulky in as much as it ran into 133 pages, containing 189 clauses seeking to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958, and the Companies (Profits) Surtax Act, 1964. Although the Bill sought to effect basic and revolutionary changes having far-reaching consequences, it was passed hurriedly without any deliberation as is evident from the fact of its passage by Lok Sabha on 15-12-1987 and by Rajya Sabha the next day, which was the last day of its Session. The Bill has been turned into an Act on assent having been given by the President on 24th January, 1988.

The hugeness of the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988) is evident from the fact that as many as 177 changes/alterations [consisting of 85 amendments; 44 omissions; 32 substitutions; and 16 insertions] have been effected by it only in the Income-tax Act, 1961.

As most of the substantial changes/alterations effected by the said Act are to come into force with effect from 1-4-1989, i.e., for and from assessment year 1989-90, it was thought fit and proper to deal with the changes exhaustively by giving annotations at the beginning.

Page 1: section 2 of DTL(A) Act, 1987:

Section 2 of the Direct Tax Laws (Amendment) Act, 1987, makes amendments throughout the 1961 Act by substituting new authorities, with effect

from 1-4-1988, in place of the existing authorities. The said section 2 reads as under:—

2. Substitution of new authorities.—In the Income-tax Act, 1961 (43 of 1961) (hereafter in this Chapter referred to as the Income-tax Act), save as otherwise expressly provided in this Act, and unless the context otherwise requires, the references to any authority specified in column (1) of the Table below shall be substituted with effect from the 1st day of April, 1988, by the references to the authority or authorities specified in the corresponding entry in column (2) of the said Table, and such consequential changes as the rules of grammar may require, shall also be made:

TABLE

| (1) | (2) |
|-----------------------------------|------------------------------------|
| Director of Inspection | Director-General or Director |
| Deputy Director of Inspection | Deputy Director |
| Assistant Director of Inspection | Assistant Director |
| Commissioner | Chief Commissioner or Commissioner |
| Inspecting Assistant Commissioner | Deputy Commissioner |
| Appellate Assistant Commissioner | Deputy Commissioner (Appeals) |
| Income-tax Officer | Assessing Officer: |

Provided that nothing contained in this section shall apply to the references to "Commissioner" occurring in sections 245D, 253, 256, 263 and 264.

ANNOTATIONS

Redesignation of income-tax authorities.—Section 2 of the DTL(A) Act, 1987, has made provisions for redesignation of the existing income-tax authorities as under:—

| <i>Existing income-tax authority</i> | <i>Redesignated income-tax authority</i> |
|--------------------------------------|--|
| (1) | (2) |
| Director of Inspection | Director-General or Director |
| Deputy Director of Inspection | Deputy Director |
| Assistant Director of Inspection | Assistant Director |
| Commissioner | Chief Commissioner or Commissioner |
| Inspecting Assistant Commissioner | Deputy Commissioner |
| Appellate Assistant Commissioner | Deputy Commissioner (Appeals) |
| Income-tax Officer | Assessing Officer |

As a result of the above section 2, throughout the Income-tax Act, 1961, subject to the exceptions expressly made and unless the subject otherwise requires, the redesignated income-tax authority is to be read for the existing income-tax authority, with effect from 1st April, 1988.

The proviso to the above section 2 specifically provides that nothing contained in that section is to apply to the references to 'Commissioner' occurring in section 245D [which lays down the procedure on receipt of a settlement application under section 245C]; section 253 [which relates to appeals to the Appellate Tribunal]; section 256 [which relates to statement of case to the High Court]; 263 [which deals with revision of orders prejudicial to the revenue]; and section 264 [which deals with revision of other orders].

Pages 5-21: section 2:

Amendment of section 2†.—By section 3 of the DTL(A) Act, 1987, section 2 has been amended, save as otherwise provided, with effect from 1-4-1989, as under:—

'(a) clauses (1) and (1A) have been renumbered as clauses (1A) and (1B) respectively, and before clause (1A) as so renumbered, the following clause (1) has been inserted, namely:—

|| '(1) "advance tax" means the advance tax payable in accordance with the provisions of Chapter XVII-C;';

(b) after clause (7), the following clause (7A) has been inserted with effect from the 1st day of April, 1988, namely:—

|| '(7A) "Assessing Officer" means the Assistant Commissioner or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Deputy Commissioner who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act;';

(c) after clause (9), the following clause (9A) has been inserted with effect from the 1st day of April, 1988, namely:—

|| '(9A) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under sub-section (1) of section 117;';

(d) clause (15A) has been renumbered as clause (15B), and before clause (15B) as so renumbered, the following clause (15A) has been inserted with effect from the 1st day of April, 1988, namely:—

† It may be noted that section 2(8), defining 'Appellate Assistant Commissioner', has been omitted, w.e.f. 1-4-1988, by section 126(1) of the DTL(A) Act, 1987.

|| '(15A) "Chief Commissioner" means a person appointed to be a Chief Commissioner of Income-tax under sub-section (1) of section 117;';

(e) in clause (16), the words "and includes a person appointed to be an Additional Commissioner of Income-tax under that sub-section" have been omitted with effect from the 1st day of April, 1988;

(f) after clause (19), the following clauses (19A) and (19B) have been inserted, with effect from the 1st day of April, 1988, namely:—

|| '(19A) "Deputy Commissioner" means a person appointed to be a Deputy Commissioner of Income-tax under sub-section (1) of section 117;';

|| '(19B) "Deputy Commissioner (Appeals)" means a person appointed to be a Deputy Commissioner of Income-tax (Appeals) under sub-section (1) of section 117;';

(g) for clause (21), the following clause (21) has been substituted, with effect from the 1st day of April, 1988, namely:—

|| '(21) "Director-General or Director" means a person appointed to be a Director-General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be a Deputy Director of Income-tax or an Assistant Director of Income-tax;';

(h) clause (22A) has been renumbered as clause (22B), and before clause (22B) as so renumbered, the following clause (22A) has been inserted, namely:—

|| '(22A) "domestic company" means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income;';

(i) after clause (23), the following clause (23A) has been inserted, namely:—

|| '(23A) "foreign company" means a company which is not a domestic company;';

(j) in clause (24), in sub-clause (iia), for the words "not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution", the words, brackets, letters and figures "or by a trust or institution of national importance referred to in clause (d) of sub-section (1) of section 80F" have been substituted;

(k) for clause (25), the following clause (25) has been substituted with effect from the 1st day of April, 1988, namely:—

|| '(25) "Income-tax Officer" means a person appointed to be an Income-tax Officer under sub-section (1) of section 117;';

(l) clause (27) has been omitted with effect from the 1st day of April, 1988;

(m) in clause (28), for the word, brackets and figure "sub-section (2)", the word, brackets and figure "sub-section (1)" have been substituted with effect from the 1st day of April, 1988;

(n) after clause (29B) [as inserted by clause (c) of section 3 of the Finance Act, 1987 (11 of 1987)], the following clause (29C) has been inserted, namely:—

‘(29C) “maximum marginal rate” means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual as specified in the Finance Act of the relevant year;’;

(o) in clause (37A),—

(i) in sub-clause (i),—

(1) the words, brackets, figures and letter “or sub-section (9) of section 80E from any payment referred to therein” have been omitted;

(2) for the words, figures and letter “section 115B or section 164”, at both the places where they occur, the words, figures and letters “section 115B or section 115BB or section 115E or section 164 or section 164A or section 167A” have been substituted with effect from the 1st day of April, 1988;

(3) after the words, figures and letter “or section 167A”, at both the places where they occur, the words, figures and letter “or section 167B” have been inserted;

(4) for the words, figures and letter “section 115B or, as the case may be, section 164”, the words, figures and letters “section 115B or section 115BB or section 115E or section 164 or section 164A or section 167A, as the case may be”, have been substituted with effect from the 1st day of April, 1988;

(5) after the word, figures and letter “section 167A”, in the third place where they occur, the words, figures and letter “or section 167B” have been inserted;

(ii) in sub-clause (ii), for the figures, letter and word “194D and 195”, the figures, letters and word “194D, 194E and 195” have been substituted with effect from the 1st day of April, 1988;

(p) clause (39) has been omitted;

(q) clause (43B) has been omitted;

(r) for clause (44), the following clause (44) has been substituted, namely:—

‘(44) “Tax Recovery Officer” means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer;’;

(s) clause (48) has been omitted.’

ANNOTATIONS

Advance tax defined.—Section 2(1), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1989, a definition of the expression 'advance tax' so as to mean the advance tax payable in accordance with the provisions of Chapter XVII-C, containing sections 207 to 219. At present, section 207, which is to be substituted with effect from 1-4-1988, defines, *inter alia*, 'advance tax'.

Agricultural income.—As a result of the amendment made by the DTL(A) Act, 1987, clause (1) of section 2, defining 'agricultural income', has been renumbered as clause (1A) of section 2, with effect from 1-4-1989.

Amalgamation.—As a result of the amendment made by the DTL(A) Act, 1987, clause (1A) of section 2, defining 'amalgamation', has been renumbered as clause (1B) of section 2, with effect from 1-4-1989.

Appellate Assistant Commissioner.—Section 2(3), defining 'Appellate Assistant Commissioner', has been omitted by the DTL(A) Act, 1987. The omission is consequent upon the redesignation of 'Appellate Assistant Commissioner' as 'Deputy Commissioner (Appeals)', with effect from 1-4-1988.

Assessing Officer defined.—Section 2(7A), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1988, a definition of the expression 'Assessing Officer', which means the Assistant Commissioner or the Income-tax Officer vested with the relevant jurisdiction by virtue of directions or orders issued under section 120(1) or 120(2) or any other provision. It may also mean a Deputy Commissioner vested with the powers of an Assessing Officer.

Assistant Commissioner defined.—Section 2(9A), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1988, a definition of the expression 'Assistant Commissioner', which is consequent upon the redesignation of 'Income-tax Officer Group "A"' as Assistant Commissioner.

Chief Commissioner defined.—Section 2(15A), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1988, a definition of the expression 'Chief Commissioner', which means a person appointed to be a Chief Commissioner of Income-tax under the newly-substituted section 117(1).

Child.—As a result of the amendment made by the DTL(A) Act, 1987, clause (15A) of section 2, defining 'child', has been renumbered as clause (15B) of section 2, with effect from 1-4-1988.

Commissioner.—As a result of amendment of section 2(16) by the DTL(A) Act, 1987, an Additional Commissioner of Income-tax has been excluded, with effect from 1-4-1988, from the definition of 'Commissioner'.

Deputy Commissioner defined.—Section 2(19A), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1988, a definition of the expression 'Deputy Commissioner', which means a person appointed to be a Deputy Commissioner of Income-tax under the newly substituted section 117(1). In effect, this is a redesignation of an Inspecting Assistant Commissioner.

Deputy Commissioner (Appeals) defined.—Section 2(19B), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1988, a definition of the expression 'Deputy Commissioner (Appeals)', which means a person appointed to be a Deputy Commissioner (Appeals) under the newly substituted section 117(1). In effect, this is a redesignation of an Appellate Assistant Commissioner.

Director-General or Director defined.—Section 2(21), which has been substituted by the DTL(A) Act, 1987, coins, with effect from 1-4-1988, a definition of the expression 'Director-General or Director', which means a person appointed to be a Director-General of Income-tax or, as the case may be, a Director of Income-tax, under the newly substituted section 117(1). It also includes a person appointed under that section to be a Deputy Director of Income-tax or an Assistant Director of Income-tax. In effect, a Director of Inspection, a Deputy Director of Inspection and an Assistant Director have been redesignated as a Director-General, a Deputy Director and an Assistant Director, respectively.

Domestic company defined.—Section 2(22A), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1989, a definition of the expression 'domestic company'. In effect, the definition of that expression as contained in section 80B(2) [which has been omitted by that Act from that date] has been shifted here.

Fair market value.—As a result of the amendment made by the DTL(A) Act, 1987, clause (22A) of section 2, defining 'fair market value', has been renumbered as clause (22B) of section 2, with effect from 1-4-1989.

Foreign company defined.—Section 2(23A), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1-4-1989, a definition of the expression 'foreign company'. In effect, the definition of that expression in section 80B(5) [which has been omitted by that Act from that date] has been shifted here with an amendment of a drafting nature.

Income, definition widened.—As a result of the amendment of section 2(24)(*ii*) by the DTL(A) Act, 1987, voluntary contributions received by—

—a trust created for wholly or partly for charitable or religious purposes, or

—an institution established wholly or partly for such purposes

are brought, for and from assessment year 1989-90, within the sweep of the definition of 'income', even though such contributions are made with a

specific direction that they shall form part of the corpus of the trust or institution.

Further, voluntary contributions received by a trust or institution of national importance referred to in the newly inserted section 80F(1)(d) are to be treated, for and from assessment year 1989-90, as income of the trust, etc.

Income-tax Officer.—The substitution of the definition of the expression 'Income-tax Officer' in section 2(25) by the DTL(A) Act, 1987, is consequential to the substitution, by that Act, of section 117, with effect from 1-4-1988.

Inspecting Assistant Commissioner.—The omission of the definition of the expression 'Inspecting Assistant Commissioner' in section 2(27) by the DTL(A) Act, 1987, is consequential to the redesignation of that authority as Deputy Commissioner, which expression has been defined in the newly inserted section 2(19A), with effect from 1-4-1988.

Inspector of Income-tax.—The amendment of section 2(28), defining 'Inspector of Income-tax', by the DTL(A) Act, 1987, is consequential to the substitution, by that Act, of section 117, with effect from 1-4-1988.

Maximum marginal rate.—Section 2(29C), newly inserted by the DTL(A) Act, 1987, coins, with effect from 1st April, 1989, a definition of the expression 'maximum marginal rate', which means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual as specified in the Finance Act of the relevant year. In effect, this definition is a reproduction, with a slight modification, of the definition of that expression in *Explanation 2* to section 164, which *Explanation* has been omitted by that Act with effect from the said date.

'Rate or rates in force' or 'rates in force'.—The effect of the amendments made in section 2(37A) by the DTL(A) Act, 1987, is as under:—

(1) The exclusion of the reference to section 80E(9) is consequent upon the omission of that section by that Act, with effect from 1-4-1989.

(2) As a result of inclusion, with effect from 1-4-1988, also of references to sections 115BB, 115E and 164A, the computation of the advance tax payable, during the financial year 1988-89 and subsequent years, under Chapter XVII-C in a case falling under any of those sections is to be calculated as per the rate or rates specified in the respective sections.

(3) As a result of inclusion, with effect from 1-4-1989, of the reference to section 167B, the computation of advance tax payable, during the financial year 1989-90 and subsequent years, under Chapter XVII-C in a case falling under that section 167B is to be calculated as per the rate or rates specified in that section. In effect, a firm, etc., is to compute advance tax payable by it, during the financial year 1989-90 and subsequent years, as per the provisions of section 167A and/or section 167B as substituted by the DTL(A) Act, 1987, with effect from 1-4-1989.

(4) As a result of inclusion, with effect from 1-4-1988, of the reference to the newly inserted section 194E, for the purposes of deduction of tax under section 194E, the 'rate in force', for and from financial year 1988-89, is the rate of income-tax specified in that behalf in the Finance Act of the relevant year.

Registered firm and unregistered firm.—The omission of section 2(39), defining 'registered firm', and of section 2(48), defining 'unregistered firm', is consequent upon the new provisions regarding taxation of firms where—under the firms are, for and from assessment year 1989-90, not to be assessed as registered or unregistered firms. All firms are to be treated alike.

Tax Recovery Commissioner.—The omission of section 2(43B), defining 'Tax Recovery Commissioner', is consequent upon the abolition of that authority, with effect from 1-4-1989.

Tax Recovery Officer.—Under the substituted definition of the expression 'Tax Recovery Officer' in section 2(44) by the DTL(A) Act, 1987, any Income-tax Officer, who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer, is to be regarded as a Tax Recovery Officer, with effect from 1-4-1989.

Pages 163-164: section 3:

Substitution of new section for section 3.—By section 4 of the DTL(A) Act, 1987, the following section 3 has been substituted, with effect from 1-4-1989, namely:—

'3. "Previous year" defined.—(1) Save as otherwise provided in this section, "previous year" for the purposes of this Act, means the financial year immediately preceding the assessment year:

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.

(2) "Previous year", in relation to the assessment year commencing on the 1st day of April, 1989, means the period which begins with the date immediately following the last day of the previous year relevant to the assessment year commencing on the 1st day of April, 1988, and ends on the 31st day of March, 1989:

Provided that where the assessee has adopted more than one period as the "previous year" in relation to the assessment year commencing on the 1st day of April, 1988, for different sources of his income, the previous year in relation to the assessment year commencing on the 1st day of April, 1989, shall be reckoned separately in the manner

aforsesaid in respect of each such source of income, and the longer or the longest of the periods so reckoned shall be the previous year for the said assessment year.

(3) Where the previous year in relation to the assessment year commencing on the 1st day of April, 1989, referred to in sub-section (2) exceeds a period of twelve months, the provisions of this Act shall apply subject to the modifications specified in the rules in the Tenth Schedule.'

ANNOTATIONS

Uniform previous year.—Under the existing section 3, each assessee has an option to have a 'previous year' of his choice and also different previous years for separate sources of income. An assessee is also entitled to change the previous year with the consent of the Income-tax Officer.

The newly substituted section 3 provides for the financial year (year commencing on 1st April and ending on 31st March) as the uniform previous year for all categories of assessable entities and for all sources of income. There is no provision regarding change of the previous year.

Previous year—general.—Under section 3(1), ordinarily, a 'previous year' means the financial year immediately preceding the assessment year. According to section 2(21) of the General Clauses Act, 1897 (10 of 1897), a 'financial year' means 'the year commencing on the first day of April'. Thus, for assessment year 1990-91, the financial year 1989-90 is to be taken as the previous year.

Previous year for a newly set up business or profession or a new source.—The proviso to section 3(1) makes provisions for the previous year in case of—

- a business or profession newly set up, or
- a source newly coming into existence

in a financial year.

In such a case, the previous year shall consist of the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.

Previous year in relation to assessment year 1989-90.—According to section 3(2), 'previous year', in relation to assessment year 1989-90, is to consist of the period beginning with the date immediately following the last day of the previous year relevant to assessment year 1988-89 and ending on 31-3-1989. Thus, in case of an assessee following calendar year as the previous year, the previous year for assessment year 1989-90 will consist of a period of 15 months from 1st January, 1988, to 31st March, 1989.

In case of an assessee adopting previous year ending on 30th June of each year, the previous year for assessment year 1988-89 would end on

30th June, 1987. In such a case, the previous year for assessment year 1989-90, as per section 3(2), will consist of a period of 21 months from 1st July, 1987, to 31st March, 1989.

Thus, where an assessee has not adopted the financial year as the previous year, in all most all cases, the previous year for the assessment year 1989-90 will exceed a period of 12 months.

The proviso to section 3(2) covers the case of an assessee who has adopted more than one period as the 'previous year' in relation to assessment year 1988-89 for different sources of his income. In such a situation, the previous year for the assessment year 1989-90 is to be reckoned separately in the manner prescribed in the main section 3(2) in respect of each source of income, and the longer or the longest of the periods so reckoned is to be treated as the previous year for the assessment year 1989-90.

Hardship avoided.—In order to avoid hardship where the previous year, as per section 3(2) for the transitional assessment year, *i.e.*, for assessment year 1989-90, exceeds a period of 12 months, section 3(3) enacts transitory provisions as per the rules contained in the newly inserted Tenth Schedule.

Rule 1 of that Schedule coins a definition of the term, "transitional previous year" to mean the previous year for the assessment year 1989-90, which will be determined in accordance with section 3(2).

Rule 2 provides that where the transitional previous year is longer than twelve months, the provisions of this Act and the Finance Act of the relevant year shall apply subject to the modifications specified in rules 3, 4, 5 and 6 of that Schedule.

Rule 3 provides that the monetary limits mentioned in various sections of the Act, which are enumerated in a Table given under that rule, will be proportionately increased during the extended transitional previous year.

A proviso to that rule 3 provides that for the purposes of that rule 3 and rules 5 and 6, where the transitional previous year consists of a part of a month, then if such part is fifteen days or more, it shall be increased to one complete month, and if such part is less than fifteen days, it shall be ignored.

Rule 4 provides that where the transitional previous year consists of a period of eighteen months or more, then the number of days specified in section 6(1) for determining the residential status of an individual, namely 182 days and 90 days shall be increased to 273 days and 135 days, respectively.

Rule 5 provides that where in a transitional previous year assessee's income under the head, "Profits and gains of business or profession" is included in the total income for a period of thirteen months or more, the depreciation allowance under section 32(1)(ii) will be proportionately increased.

Rule 6 provides that tax will be payable on the total income of the transitional previous year at the average rate of tax applicable to the proportionate income of twelve months.

Rule 7 empowers the Board, where the transitional previous year is longer than twelve months, to remove genuine hardship, by general or special order, by granting appropriate relief in any case or class of cases.

Page 180: section 4:

Amendment of section 4.—By section 5 of the DTL(A) Act, 1987, section 4(1) has been amended, with effect from 1st April, 1989, as under:—

‘(a) for the words “subject to the provisions of, this Act”, the words and brackets “subject to the provisions (including provisions for the levy of additional income-tax) of, this Act” have been substituted;

(b) the words “or previous years, as the case may be,” have been omitted.’.

ANNOTATIONS

Effect of amendments to section 4.—The first amendment in section 4, relating to charge of income-tax, is consequent upon the levy of additional income-tax in certain cases as per the provisions of the newly inserted section 158B for and from assessment year 1989-90.

The other amendment in that section 4 is consequent upon the adoption of uniform previous year for all categories of assessee and that too for all sources of income.

Pages 372-397: section 10:

Amendment of section 10†.—By section 6 of the DTL(A) Act, 1987, section 10 has been amended, save as otherwise provided, with effect from 1-4-1989, as under:—

“(a) after clause (2), the following clause (2A) has been inserted, namely:—

“(2A) in the case of a person being a partner of a firm which is assessed as such, his share in the total income of the firm.

Explanation.—For the purposes of this clause, the share of a partner in the total income of a firm assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits;”;

† It may be noted that by section 126(2) of the DTL(A) Act, 1987, in section 10, in clause (15), in sub-clause (iia), in the *Explanation*, for the words, brackets and figures “the *Explanation* to clause (ii) of sub-section (5) of section 11”, the words, brackets and figures “clause (ii) of the *Explanation* to clause (vii) of sub-section (1) of section 36” have been substituted, w.e.f. 1-4-1989.

(b) for clauses (4) and (4A), the following clause (4) has been substituted, namely:—

“(4)(i) in the case of a non-resident, any income by way of interest on such securities or bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf, including income by way of premium on the redemption of such bonds;

(ii) in the case of an individual, who is a person resident outside India as defined in clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the said Act and the rules made thereunder;”;

(c) for clause (5), the following clause (5) has been substituted, namely:—

“(5) subject to such conditions as the Central Government may prescribe (including conditions as to number of journeys and the amount which shall be exempt per head) in the case of an individual, the value of any travel concession or assistance received by or due to him,—

(a) from his employer for himself and his family, in connection with his proceeding on leave to any place in India;

(b) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service:

Provided that the amount exempt under sub-clause (a) or sub-clause (b) shall not, except in such cases and under such circumstances as may be prescribed having regard to the travel concession or assistance granted to the employees of the Central Government, exceed the value of the travel concession or assistance which would have been received by or due to the individual in connection with his proceeding to any place in India on leave or, as the case may be, after retirement from service or after the termination of his service.

Provided further that the amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel.

Explanation.—For the purposes of this clause, “family”, in relation to an individual, means—

(i) the spouse and children of the individual; and

(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.”;

(d) in clause (10),—

(i) in sub-clause (iii), for the words “calculated on the basis of the average salary for the three years immediately preceding the year in which

the gratuity is paid, subject to a maximum of thirty-six thousand rupees or twenty months' salary so calculated, whichever is less", the words "calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event occurs, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government" have been substituted;

(ii) in the first and second provisos, for the words "shall not exceed thirty-six thousand rupees", the words "shall not exceed the limit so specified" have been substituted;

(iii) the third and fourth provisos have been omitted;

(iv) in the *Explanation*, for the words "In this clause", the words, brackets, figures and letters "In this clause, and in clause (10AA)" have been substituted;

(e) in clause (10A), the proviso has been omitted;

(f) in clause (10AA), in sub-clause (ii),—

(i) for the words "six months", the words "eight months" have been substituted with retrospective effect from the 1st day of July, 1986;

(ii) for the words "or thirty thousand rupees, whichever is less", the words "subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government" have been substituted with retrospective effect from the 1st day of July, 1986;

(iii) in the first and second provisos, for the words "shall not exceed thirty thousand rupees", the words "shall not exceed the limit so specified" have been substituted with retrospective effect from the 1st day of July, 1986;

(iv) the third and fourth provisos have been omitted with retrospective effect from the 1st day of July, 1986;

(v) in the *Explanation*, the brackets and figure "(i)", and clause (ii) have been omitted with retrospective effect from the 1st day of July, 1986.

(g) in clause (10B), in the first proviso, for clause (ii), the following clause (ii) has been substituted, namely:—

“(ii) such amount, not being less than fifty thousand rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf,”;

(h) for clause (14), the following clause (14) has been substituted, namely:—

“(14)(i) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as the Central Government may, by notification in the Official Gazette, specify, to the extent to which such expenses are actually incurred for that purpose;

(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as the Central Government may, by notification in the Official Gazette, specify, to the extent specified in the notification;";

(i) in clause (15), for sub-clauses (i), (ia), (ib), (ii) and (iia), the following sub-clause (i) has been substituted, namely:—

"(i) income by way of interest, premium on redemption or other payment on such securities, bonds, annuity certificates, savings certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such conditions and limits as may be specified in the said notification;";

(j) for clauses (17A), (17B) and (18), the following clause (17A) has been substituted, namely:—

"(17A) any payment made, whether in cash or in kind,—

- (i) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or
- (ii) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;";

(k) clause (21) and (23) have been omitted;

(l) in clause (23C),—

(i) in sub-clause (iii), the word "or" occurring at the end has been omitted;

(ii) sub-clauses (iv) and (v) and the proviso have been omitted.

(m) after clause (23C), the following clause (23D) has been inserted with effect from the 1st day of April, 1988, namely:—

'(23D) any income from such Mutual Fund set up by a public sector bank or a public financial institution and subject to such conditions, including the condition that at least ninety per cent. of the income from the Mutual Fund shall be distributed to the unit holders every year, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation.—For the purposes of this clause,—

(a) the expression "public sector bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new Bank constituted under section 3 of the Banking Companies (Acquisition and

Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);

(b) the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956).".

ANNOTATIONS

Partner's share income—new section 10(2A).—The newly inserted section 10(2A) grants, for and from assessment year 1989-90, exemption in respect of a partner's share in the 'total income' of a firm which has been assessed as such under section 167A. The *Explanation* to that section enacts overriding provisions and provides that the share of a partner in the total income of a firm assessed as such is, notwithstanding anything contained in any other law, to be computed by dividing the taxable income of the firm in the same proportion as the profits sharing ratio mentioned in the partnership deed.

Non-resident's certain interest incomes—substituted section 10(4).—The newly substituted section 10(4)(i) re-enacts the provisions of the existing section 10(4) with the difference that the names of the various bonds mentioned in the existing section 10(4) have been taken out as the Central Government has been empowered to specify also the bonds, receipts wherefrom by way of interest or premium on redemption would be exempt under section 10(4)(i).

The provisions of the existing section 10(4A) has been re-enacted in the new section 10(4)(ii) in a simplified form without any material change.

The new section 10(4) is to come into force with effect from 1-4-1989.

Travel concession to employees—substituted section 10(5).—Under the newly substituted section 10(5), the benefit of exemption in respect of value of travel concession and passage money presently, upto assessment year 1988-89, available to citizens only has, for and from assessment year 1989-90, been extended to non-citizens also. Further, it has been provided that the exemption will be limited to the amount actually spent. The ceiling on the number of journeys for going to home town and also on the amount of exemption per head, is to be provided in the rules on the lines of the ceilings in the case of the Government servants.

Death-cum-retirement gratuity—amended section 10(10).—Gratuity received from private employers is exempt from tax to the extent of the amount calculated at the rate of one-half month's salary for each year of completed service subject to the maximum of 20 months' salary or Rs. 36,000, whichever is less. Upto 1988-89 A.Y., such calculation is to be made on the basis of the average salary of 3 preceding years. For and from A.Y. 1989-90, the same is to be calculated on the basis of the average salary of preceding 10 months only.

Also, the maximum limit of exemption (Rs. 36,000) has not been specified in the amended section, but is to be notified by the Central Government keeping in view the limit applicable to Central Government employees (presently Rs. 50,000). Further, the third and fourth provisos in this clause have been omitted, as the same have become superfluous.

Commutated value of pension—amended section 10(10A).—Commutated value of pension received from private employers is exempt to the extent mentioned in section 10(10A)(ii). Proviso to that section which applies to cases of employees retiring before 19-8-1965 has become redundant and has, therefore, been omitted, with effect from 1-4-1989.

Encashment of leave salary—amended section 10(10AA).—Under the existing section 10(10AA), cash equivalent of leave salary received from private employers is exempt from tax subject to a maximum of six months' salary or Rs. 30,000, whichever is less.

As a result of the amendments of section 10(10AA), with retrospective effect from 1-7-1986, the limit of six months has been raised to eight months. Further, the maximum limit of Rs. 30,000 has not been specified in the section itself but the Central Government has been empowered to notify the maximum limit in that regard keeping in view the limit applicable to Central Government employees.

The amendments of the first and second provisos are of consequential nature.

The third and fourth provisos have been omitted as these have become superfluous.

Retrenchment compensation—amended section 10(10B).—Under the existing section 10(10B), compensation received by a workman under the Industrial Disputes Act, 1947, or under any other Act or award or contract of service or otherwise at the time of retirement is exempt from tax subject to a maximum of the compensation allowable under the Industrial Disputes Act, 1947, or Rs. 50,000, whichever is less. As a result of the amendment, effective from 1-4-1989, the maximum limit, instead of being mentioned in the section, is to be notified by the Central Government.

Special allowance for other expenses relating to duties to be performed—substituted section 10(14).—Under the substituted section 10(14), operative from 1-4-1989, all specific allowances exempt from tax in computing income from salary has to be notified by the Central Government.

Interest and other incomes from certain specified sources of national importance—amended section 10(15).—Under the substituted sub-clause (i) of section 10(15), operative with effect from 1-4-1989, all the securities, bonds, saving certificates and deposits, etc., mentioned in the existing sub-clauses (i), (ia), (ib), (ii) and (ia) of section 10(15), incomes wherefrom are eligible for exemption, are to be notified by the Central Government and their mention is not to be found in the substituted sub-clause

(i) of section 10(15). Further, the amendment in the *Explanation* to section 10(15) (iii) is consequential to the omission, by that Act, of section 11.

Awards, rewards, etc., for approved purposes—substituted section 10(17A).—Any payments made, whether in cash or in kind, in pursuance of awards or rewards instituted by the Central Government or State Governments or approved by the Central Government are exempt under the provisions of the existing clauses (17A), (17B) and (18) of section 10. The provisions of these three clauses have been simplified by not mentioning the purposes of the awards or rewards in the clauses and by combining the three clauses into a single clause (17A) of section 10, which is operative with effect from 1-4-1989.

Scientific research associations—section 10(21) omitted.—Section 10(21), granting exemption in respect of income of approved scientific research associations, has been omitted, w.e.f. 1-4-1989. The newly inserted section 80F has to take care of such income.

Sports associations, etc.—Section 10(23) omitted.—Section 10(23), granting exemption in respect of income of specified sports associations, etc., has been omitted, w.e.f. 1-4-1989. The newly inserted section 80F has to take care of such income.

Income of certain funds of national importance—sub-clauses (iv) and (v) of section 10(23C) omitted.—Sub-clauses (iv) and (v) of section 10(23C), granting exemption in respect of income of a notified fund or institution established for charitable purposes and income of a notified trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes, have been omitted, w.e.f. 1-4-1989. Such incomes have to be taken care of by the newly inserted section 80F.

Income of specified Mutual Funds—new section 10(23D).—The newly inserted section 10(23D) grants exemption, for and from assessment year 1988-89, in respect of income of a Mutual Fund set up by a public sector bank [as defined in clause (a) of the *Explanation*] or a public financial institution [as defined in section 4A of the Companies Act, 1956], as may be specified by the Central Government, by notification in the Official Gazette, and subject to certain conditions including the condition that at least 90 per cent. of the annual income of the said Fund shall be distributed to the unit-holders.

Pages 480-483; section 10A:

Insertion of new section 10A(8).—By section 126(3) of the DTL(A) Act, 1987, in section 10A, after sub-section (7) and before the *Explanation*, the following sub-section (8) has been inserted, w.e.f. 1-4-1989, namely:—

“(8) References in this section to any other provision of this Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987, shall, notwithstanding such amendment or omission, be construed, for the purposes of this section, as if such amendment or omission had not been made.”.

ANNOTATIONS

New section 10A(8).—The newly inserted section 10A(8) enacts a saving clause to the effect that references in section 10A to any other provision of the 1961 Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987, is, notwithstanding such amendment or omission, to be construed, for the purposes of that section 10A, as if such amendment or omission had not been made.

Pages 487-500: sections 11 to 13:

Omission of sections 11, 12, 12A and 13.—Section 7 of the DTL(A) Act, 1987, has omitted—

- section 11 relating to income from property held for charitable or religious purposes;
- section 12 relating to income of trusts or institutions from contributions;
- section 12A laying down conditions as to registration of trusts, etc.; and
- section 13 making provisions for forfeiture of exemption under section 11 or section 12,

with effect from 1-4-1989.

Thus, the provisions granting exemption in respect of income of charitable or religious trusts and/or institutions have been omitted for and from assessment year 1989-90. Instead, a new section 80F has been inserted with effect from 1st April, 1989, *i.e.*, for and from assessment year 1989-90, dealing with exemption in respect of the income of charitable or religious trusts and/or trusts or institutions of national importance, which will include philanthropic institutions or institutions for scientific research or for carrying out rural development programmes or programmes of conservation of natural resources or afforestation of waste land. For detailed discussion, reference may be made to the annotations given under section 80F.

It may be noted that the newly inserted section 54A grants relief of tax on capital gains on transfer of property held under trust for charitable or religious purposes or by certain institutions.

Pages 631-632: section 15:

Amendment of section 15.—By section 8 of the DTL(A) Act, 1987, in section 15, the *Explanation* has been numbered as *Explanation 1*, and after

Explanation 1 as so numbered, the following *Explanation 2* has been inserted with effect from 1-4-1989, namely:—

|| *'Explanation 2.—Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.'*

ANNOTATIONS

New Explanation 2.—The newly inserted (w.e.f. 1-4-1989) *Explanation 2* to section 15 clarifies that for the purposes of that section, any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm is not to be regarded as 'salary'.

It may be noted that under the provisions of the newly inserted (w.e.f. 1-4-1989) section 28(v), such salary, etc., is to be taxed under the business head.

Pages 766-767: section 28:

Amendment of section 28.—By section 9 of the DTL(A) Act, 1987, section 28 has been amended, with effect from 1-4-1989, as under:—

'(a) after clause (iv), the following clause (v) has been inserted, namely:—

|| "(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm.";

(b) *Explanation 1* has been omitted.'

ANNOTATIONS

New section 28(v).—Under the newly inserted (w.e.f. 1-4-1989) section 28(v), any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm is to be taxed under the head "Profits and gains of business or profession".

The omission of *Explanation 1*, which refers to profits from managing agency, has been effected as the same has become redundant consequent upon the abolition of the managing agency system long back.

Page 856: section 29:

Amendment of section 29.—By section 126(4) of the DTL(A) Act, 1987, in section 29, for the words, figures and letter "sections 30 to 43A", the words, figures and letter "sections 30 to 43B" have been substituted, w.e.f. 1-4-1989. This amendment is of a consequential nature.

Pages 900-901: section 32(2):

Amendment of section 32(2).—By section 126(5) of the DTL(A) Act, 1987, in section 32, in sub-section (2), the brackets and words “(or, if the assessee is a registered firm or an unregistered firm assessed as a registered firm, in the assessment of its partners)” have been omitted, w.e.f. 1-4-1989.

This amendment is consequential to the elimination of the distinction between a registered firm and an unregistered firm for the purpose of tax levy, for and from assessment year 1989-90.

Pages 1056-1060: section 35:

Omission of section 35.—By section 10 of the DTL(A) Act, 1987, section 35, relating to expenditure on scientific research, has been omitted, w.e.f. 1-4-1989. It may be noted that deduction for payments to approved scientific research associations is to be allowed under the new section 80G(1)(iii) and the in-house expenditure is to be allowed under section 37.

Pages 1086-1088: section 35B:

Omission of section 35B.—By section 10 of the DTL(A) Act, 1987, section 35B, relating to export markets development allowance, has been omitted, w.e.f. 1-4-1989, as that provision is not applicable in respect of expenditure incurred after 28-2-1983.

Pages 1105-1106: section 35C:

Omission of section 35C.—By section 10 of the DTL(A) Act, 1987, section 35C, relating to agricultural development allowance, has been omitted, w.e.f. 1-4-1989, as that provision is not applicable in respect of expenditure incurred after 28-2-1984.

Pages 1111-1112: section 35CC:

Omission of section 35CC.—By section 10 of the DTL(A) Act 1987, section 35CC, relating to rural development allowance, has been omitted, w.e.f. 1-4-1989, as no programme has to be approved under that provision after 16-3-1985.

1121-1122: section 35CCA:

Omission of section 35CCA.—By section 10 of the DTL(A) Act, 1987, section 35CCA, relating to expenditure by way of payment to associations and institutions for carrying out rural development programmes, has been omitted, w.e.f. 1-4-1989, as such expenditure has been taken care of by the newly inserted section 80G(1)(iii).

Page 1131: section 35CCB:

Omission of section 35CCB.—By section 10 of the DTL(A) Act, 1987, section 35CCB, relating to expenditure by way of payment to associations and institutions for carrying out programmes of conservation of natural

resources, has been omitted, w.e.f. 1-4-1989, as such expenditure has been taken care of by the newly inserted section 80G(1)(iii).

Pages 1153-1159: section 36:

Amendment of section 36.—By section 11 of the DTL(A) Act, 1987, section 36 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1),—

(i) in clause (ii), the provisos have been omitted;

(ii) in clause (vii), in the opening portion, for the words “any debt or part thereof which is established to have become a bad debt in the previous year”, the words “any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year” have been substituted;

(iii) in clause (viii), in the *Explanation*, for clause (ii), the following clause (ii) has been substituted, namely:—

“(ii) “scheduled bank” means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), but does not include a co-operative bank;”;

(b) in sub-section (2),—

(i) for clause (i), the following clause (i) has been substituted, namely:—

“(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;”;

(ii) in clause (iii), after the words “earlier previous year”, the brackets, words, figures and letters “(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)” have been inserted;

(iii) in clause (iv), after the words “accounts of the previous year”, the brackets, words, figures and letters “(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)” have been inserted.’

ANNOTATIONS

Two provisos to section 36(1)(ii) omitted.—As a result of the omission of the first proviso to section 36(1)(ii), the ceiling laid down therein as to the allowability of the bonus is no more operative for and from assessment year 1989-90. Further, as a result of the omission of the second proviso to section 36(1)(ii), there is no need, for and from assessment year 1989-90, to test the reasonableness of the amount of bonus as well as of commission on the criteria laid down in the existing second proviso.

However, the bonus and commission covered by section 36(1)(ii) have to be allowed, for and from assessment year 1989-90, on actual payment basis only. This is so as a result of the insertion of a new clause (c) in section 43B, w.e.f. 1-4-1989.

Amendment of section 36(1)(vii).—As a result of the amendment of section 36(1)(vii), the claim for any bad debt or part thereof is to be allowed, for and from assessment year 1989-90, in the year in which such bad debt or part thereof has been actually written off as irrecoverable in the accounts of the assessee for the relevant previous year.

Amendment of section 36(1)(viii).—The substitution of clause (ii) of the *Explanation* to section 36(1)(viii), coining the definition of the expression “scheduled bank”, has been necessitated as a result of omission of section 11, w.e.f. 1-4-1989.

Amendment of section 36(2).—The substitution of clause (i) of section 36(2) is consequent upon the amendment of section 36(1)(vii), w.e.f. 1-4-1989.

Further, as a result of the amendments of clauses (iii) and (iv) of section 36(2), the applicability of those clauses [which provide for allowing deduction for bad debts in an earlier previous year or in a later previous year, if the Income-tax Officer is satisfied that the debt in question did not become bad in the year in which it was written off and claimed as such by an assessee] has been restricted upto and including the assessment year 1988-89.

Page 1456: section 39:

Omission of section 39.—By section 12 of the DTL(A) Act, 1987, section 39, dealing with the sharing of managing agency commission, has been omitted, w.e.f. 1-4-1989, as the provisions of that section have become redundant consequent upon the abolition of the managing agency system long back.

Pages 1458-1461: section 40:

Amendment of section 40.—By section 13 of the DTL(A) Act, 1987, section 40 has been amended, w.e.f. 1-4-1989, as under:—

‘(i) in the opening portion, for the words and figures “sections 30 to 39”, the words and figures “sections 30 to 38” have been substituted;

(ii) for clause (b), the following clauses (b) and (ba) have been substituted, namely:—

‘(b) in the case of any firm assessable as such,—

- (i) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as remuneration) to any partner who is not a whole-time working partner; or
- (ii) any payment of remuneration to any partner who is a whole-time working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or
- (iii) any payment of remuneration to any partner who is a whole-time working partner, or of interest to any partner, which, in either case is authorised by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorised by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorisation for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or
- (iv) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at such rate of interest as may be prescribed having regard to the maximum rate of interest payable by a scheduled bank on its deposits; or
- (v) any payment of remuneration to any partner who is a whole-time working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder:—
 - (1) in case of a firm carrying on a profession referred to in section 44AA or which is notified for the purpose of that section,—

| | |
|--|------------------------------|
| (a) on the first Rs. 50,000 of the book-profit | at the rate of 90 per cent.; |
| (b) on the next Rs. 50,000 of the book-profit | at the rate of 65 per cent.; |
| (c) on the balance of the book-profit | at the rate of 40 per cent.; |

(2) in the case of any other firm,—

- | | |
|--|------------------------------|
| (a) on the first Rs. 50,000 of the book-profit | at the rate of 75 per cent.; |
| (b) on the next Rs. 50,000 of the book-profit | at the rate of 50 per cent.; |
| (c) on the balance of the book-profit | at the rate of 25 per cent. |

Explanation 1.—In this clause,—

- (a) “whole-time working partner” means a partner of the firm who is in receipt of any remuneration from the firm for services rendered to that firm and who is not in receipt of any similar remuneration from any other person;
- (b) “book-profit” means the profit which would have been computed in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, 1956 (1 of 1956), if those provisions had been applicable to a firm and before making any deduction of any loss brought forward or any unabsorbed depreciation allowance or any other allowance or deduction brought forward from any earlier previous year and without making any deduction under section 32AB or section 33AB or under Chapter VI-A as increased by the following amounts if they have been taken into account in arriving at such profits—
 - (1) the aggregate amount of the remuneration and the interest to all the partners of the firm;
 - (2) income-tax;
 - (3) reserves or provisions of any kind;
 - (4) depreciation;
 and as reduced by the depreciation computed in accordance with the provisions of sub-section (1) of section 32 and the aggregate amount of interest allowed to all the partners of the firm under this clause;
- (c) “scheduled bank” shall have the same meaning as is assigned to it in the *Explanation* to clause (viii) of sub-section (1) of section 36.

Explanation 2.—Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as “partner in a representative capacity” and “person so represented”, respectively),—

- (i) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;
- (ii) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person;

(ba) in the case of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body.

Explanation 1.—Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.

Explanation 2.—Where an individual is a member of an association or body on behalf, or for the benefit, of any other person (such member and the other person being hereinafter referred to as “member in a representative capacity” and “person so represented”, respectively),—

- (i) interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, shall not be taken into account for the purposes of this clause;
- (ii) interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so represented to the association or body, shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a member of an association or body otherwise than as member in a representative capacity, interest paid by the association or body to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person;’

(iii) clause (c) has been omitted.’

ANNOTATIONS

Amendment of section 40, opening portion.—The amendment made in the opening portion of section 40 is consequent upon the omission of section 39, w.e.f. 1-4-1989.

Payment of interest, salary, bonus, etc., to a partner of a firm—when deductible and when not deductible—new section 40(b).—For and from assessment year 1989-90, in the case of any firm assessable as such, the following payments are deductible in computing the total income of such firm:—

(1) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as remuneration) to whole-time working partner(s) for services rendered, provided such payments are authorised by, and are in accordance with, the terms of the partnership deed, not having any retrospective effect in that regard, in so far as the amount of such payment to all the partners during the relevant previous year does not exceed the following limits:—

| | <i>Business firm</i> | <i>Professional firm</i> |
|--|--------------------------|------------------------------|
| On the first Rs. 50,000 of book-profit of the firm | .. 75% | 90% |
| On the next Rs. 50,000 of book-profit | .. 50% | 65% |
| On the balance of book-profit | .. 25% | 40% |

(2) any payment of interest at the rate to be prescribed, having regard to the maximum rate of interest payable by a scheduled bank on its deposits, to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period after the date of such partnership deed.

On the other hand, for and from assessment year 1989-90, in the case of any firm assessable as such, the following payments are not deductible in computing the total income of such firm:—

(1) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as remuneration) to a partner who is not a whole-time working partner;

(2) any payment of remuneration to all the working partners in excess of the following limits:—

| | <i>Business firm</i> | <i>Professional firm</i> |
|--|--------------------------|------------------------------|
| On the first Rs. 50,000 of book-profit of the firm | .. 75% | 90% |
| On the next Rs. 50,000 of book-profit | .. 50% | 65% |
| On the balance of book-profit | 25% | 40% |

(3) any payment of remuneration even to a whole-time working partner, which is not authorised by, and is not in accordance with, the terms of the partnership deed;

(4) any payment of interest to any partner, which is not authorised by, or is not in accordance with, the terms of the partnership deed or which is at a rate in excess of the prescribed rate of interest.

Certain expressions defined.—*Explanation 1* to new section 40(b) coins definitions of the expressions—

- (a) “whole-time working partner”, which means a partner of the firm who is in receipt of any remuneration from the firm for services rendered to that firm and who is not in receipt of any similar remuneration from any other person;
- (b) “book-profit”, which means profit computed in accordance with the provisions of Parts II & III of Schedule VI to the Companies Act, 1956, if and in so far as these provisions had been applicable to a firm, after making certain adjustments, as mentioned in the definition.
- (c) “scheduled bank”, for which definition of that expression as given in *Explanation (ii)* to section 36(1)(viii) has been adopted.

Explanations 2 and 3.—*Explanations 2* and *3* to the new section 40(b) enact the same provisions as are contained in *Explanations 2* and *3* to the existing section 40(b).

Payment of interest, salary, bonus, etc., to a member of an AOP—when not deductible—new section 40(ba).—For and from assessment year 1989-90, under the new section 40(ba), any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by an association of persons or a body of individuals to a member is not to be allowed as a deduction.

Explanations 1 to *3* to the new section 40(ba) are the same as *Explanations 1* to *3* to the existing section 40(b) with the difference that while the *Explanations* to the existing section 40(b) deal with the treatment of interest paid by the firm to its partners and *vice versa*, the *Explanations* to the new section 40(ba) deal with treatment of interest paid by the association of persons or body of individuals to its members or *vice versa*.

Ceiling on allowability of remuneration to directors, etc., not operative for and from assessment year 1989-90.—As a result of the omission of section 40(c) by the DTL(A) Act, 1987, the ceiling imposed on remuneration of directors and certain other persons of a company has no application for and from assessment year 1989-90.

Page 1489: section 40A(2)(a):

Amendment of section 40A(2)(a).—By section 126(6) of the DTL(A) Act, 1987, in section 40A, in sub-section (2), in clause (a), the proviso has been omitted, w.e.f. 1-4-1989. This amendment is consequential to the omission, by that Act, of section 40(c).

Pages 1489-1497: section 40A:

Amendment of section 40A.—By section 14 of the DTL(A) Act, 1987, section 40A has been amended, w.e.f. 1-4-1989, as under:—

'(a) in sub-section (3) for the words "two thousand five hundred rupees", wherever they occur, the words "ten thousand rupees" have been substituted; (b) sub-sections (5) and (6) have been omitted.'

ANNOTATIONS

Amendment of section 40A(3).—Under the existing provisions of section 40A(3), payment made, in respect of a business expenditure, in a sum exceeding Rs. 2,500 is not to be allowed as a deduction if such payment is made otherwise than by a crossed cheque or crossed bank draft. The said limit of Rs. 2,500 has been raised, with effect from 1-4-1989, to Rs. 10,000.

As the amendment is effective from 1-4-1989, it may be said that the amendment is operative for and from assessment year 1989-90 and, therefore, any payment made, even prior to 1-4-1989 during the previous year relevant to that assessment year, upto Rs. 10,000 cannot be disallowed as a deduction even if such payment is made otherwise than by a crossed cheque or crossed bank draft. But, such a contention cannot prevail because the crucial date for the purposes of section 40A(3) is the date of payment.

Omission of sections 40A(5) and 40A(6).—Section 40A(5), which lays down monetary ceilings on payment of remuneration, etc., by an assessee to its employees, and section 40A(6), which lays down monetary ceilings on payment by an assessee to its former employees of fees for services rendered, have been omitted, with effect from 1-4-1989, i.e., for and from assessment year 1989-90.

Page 1530: new section 41(6):

Insertion of new section 41(6).—By section 126(7) of the DTL(A) Act, 1987, in section 41, after sub-section (5), the following sub-section (6) has been inserted, w.e.f. 1-4-1989, namely:—

"(6) References in sub-section (3) to any other provision of this Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987, shall, notwithstanding such amendment or omission, be construed, for the purposes of that sub-section, as if such amendment or omission had not been made."

ANNOTATIONS

New section 41(6).—The newly inserted section 41(6) enacts a saving clause and provides that references in section 41(3) to any other provision of the 1961 Act, which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987, is, notwithstanding such amendment or omission, to be construed, for the purposes of that section 41(3), as if such amendment or omission had not been made.

Page 1609: section 43A(1):

Amendment of section 43A(1).—By section 126(8) of the DTL(A) Act, 1987, in section 43A, in sub-section (1), for the words, brackets, figures and letter “in clause (iv) of sub-section (1) of section 35 or in section 35A”, the words, figures and letter “in section 35A” have been substituted, w.e.f. 1-4-1989. This amendment is consequential to the omission, by that Act, of section 35.

Page 1614: section 43B:

Amendment of section 43B.—By section 15 of the DTL(A) Act, 1987, section 43B has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in clause (b), the word “or” has been inserted at the end;

(b) after clause (b), the following clause (c) has been inserted, namely:—

|| “(c) any sum referred to in clause (ii) of sub-section (1) of section 36,”;

(c) in the first proviso [as inserted by section 10 of the Finance Act, 1987 (11 of 1987)], after the word, brackets and letter “clause (a)”, the words, brackets and letter “or clause (c)” have been inserted;

(d) the *Explanation* has been numbered as *Explanation 1*, and after *Explanation 1* as so numbered, the following *Explanation 2* has been inserted, namely:—

|| “*Explanation 2.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (c) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.”.

ANNOTATIONS

Ambit of section 43B widened.—As a result of the insertion, with effect from 1-4-1989, of clause (c) in section 43B, the bonus and/or commission payments to employees as referred to in section 36(1)(ii) have been brought within the ambit of section 43B so that deduction in respect of such payments is to be allowed, for and from assessment year 1989-90, only in computing the income of that previous year in which these are actually paid and not on the basis of accrual.

First proviso also made applicable to such payments.—As a result of the amendment of the first proviso to section 43B, such bonus and/or commission payments are also to be allowed even where the payment in re-

spect thereof is made before the due date for furnishing the return of income for that assessment year and the evidence of such payment is furnished along with such return.

No double deduction possible.—The newly inserted *Explanation 2* clarifies that if deduction in respect of any such bonus and/or commission payment has already been allowed in the assessment year 1988-89 or any earlier assessment year on accrual or due basis, the deduction is not to be allowed again in the year in which the sum is actually paid.

Page 1614: section 44:

Amendment of section 44.—By section 126(9) of the DTL(A) Act, 1987, in section 44, for the words, figures and letter “sections 28 to 43A”, the words figures and letter “sections 28 to 43B” have been substituted, w.e.f. 1-4-1989. This amendment is of a consequential nature, necessitated by existence of section 43B.

Page 1727: new section 54A:

Insertion of new section 54A.—By section 16 of the DTL(A) Act, 1987, after section 54, the following new section 54A has been inserted, w.e.f. 1-4-1989, namely:—

‘54A. Relief of tax on capital gains on transfer of property held under trust for charitable or religious purposes or by certain institutions.—(1) Where the capital gain arises from the transfer of a long term capital asset being property specified in sub-section (2) (the capital asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, during the previous year in which the transfer took place or within a period of six months after the close of such previous year, acquired another capital asset (such asset being hereafter in this section referred to as the new asset), to be held for the same purposes as those for which the original asset was held, then, the capital gain arising from the transfer shall be dealt with in accordance with the following provisions, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45:

Provided that in a case where the transfer of the original asset is by way of compulsory acquisition under any law and the full amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer but is received after the expiry of the previous year, the period of six months referred to in this section

shall, in relation to so much of such compensation as is not received before such expiry, be reckoned from the date immediately following the date on which such compensation is received by the assessee.

(2) The property referred to in sub-section (1) shall be the following, namely:—

- (a) property held under trust wholly for charitable or religious purposes in India or by an institution established wholly for such purposes in India;
- (b) property held under trust in part only for charitable or religious purposes in India, the trust having been created before the commencement of this Act;
- (c) property held under a trust created on or after the 1st day of April, 1952, or by an institution established on or after that date, for a charitable purpose which is for the benefit of citizens of India abroad or which tends to promote international welfare in which India is interested;
- (d) property held by a trust or institution of national importance referred to in clause (d) of sub-section (1) of section 80F.

(3) In the case of a capital asset being property falling under clause (b) of sub-section (2), the provisions of sub-section (1) shall apply only to that fraction of the capital gain arising from the transfer of such capital asset which represents the extent to which the income derived from the capital asset transferred was, immediately before such transfer, applicable to charitable or religious purposes.

Explanation.—In this section, “net consideration” shall have the meaning assigned to it in *Explanation 5* below sub-section (1) of section 54E.’

ANNOTATIONS

Relief in respect of long-term capital gains on transfer of certain properties held under trust for charitable or religious purposes, etc.—new section 54A(1).—For and from assessment year 1989-90, under new section 54A(1), if an assessee transfers any long-term capital asset of the nature specified in section 54A(2) giving rise to capital gains and acquires during the previous year in which the transfer took place or within a period of six months after the close of such previous year another capital asset to be held for the same purposes as those for which the original asset was held, the entire capital gain shall be exempt, if the cost of the new asset is not less than the net consideration [as defined in *Explanation 5* below section 54E(1)] received. If the cost of the new asset is less than the net consideration, the exemption is to be granted proportionately on the basis of investment of net consideration for acquiring the new asset.

The proviso to section 54A(1) makes provisions for the mode of determination of period of six months in a case where transfer of original asset

is by way of compulsory acquisition and the amount of compensation, whole or part, is received after the expiry of the previous year. In such a case, the period of six months is to be reckoned from the date immediately following the date on which such compensation is received by the assessee.

Properties eligible for exemption specified—new section 54A(2).—Section 54A(2), in its clauses (a) to (d), specifies the properties of the charitable or religious trust, etc., which are eligible for the relief provided for under section 54A(1).

It may be noted that capital gains arising from properties covered by clauses (a) and (b) of section 54A(2) are eligible for relief, upto and including assessment year 1988-89, under the existing section 11(1A), which has been omitted by the DTL(A) Act, 1987, w.e.f. 1-4-1989.

Partial relief in respect of property specified in section 54A(2)(b)—new section 54A(3).—Section 54A(3) provides that where the capital asset is a property held under trust created before 1st April, 1962, in part only for charitable or religious purposes, then 'only that fraction of capital gain arising from transfer of such asset which represents the extent to which the income derived from the asset transferred was, prior to such transfer, applicable to charitable or religious purposes is eligible for such relief.

Pages 1818-1822: section 64:

Amendment of section 64(1).—By section 17 of the DTL(A) Act, 1987, section 64(1) has been amended, w.e.f. 1-4-1989, as under:—

'(a) clause (i) has been omitted;

(b) in clause (ii), for the proviso, the following proviso has been substituted, namely:—

“Provided that nothing in this clause shall apply in relation to any such income arising to the spouse from a firm carrying on any such profession as is referred to in sub-section (1) of section 44AA, where the spouse possesses any technical or professional qualification in the nature of a degree or diploma of a university within the meaning of clause (c) of the *Explanation* below sub-section (2B) of section 32A;”

(c) clause (iii) has been omitted;

(d) in clause (iv), the words, brackets and figure “in a case not falling under clause (i) of this sub-section,” have been omitted;

(e) in clause (v), the words, brackets and figures “in a case not falling under clause (iii) of this sub-section,” and the brackets and words “(not being a married daughter)” have been omitted;

(f) in clause (vii), the brackets and words “(not being a married daughter)” have been omitted;

(g) for *Explanation* 1, the following *Explanation* 1 has been substituted, namely:—

"Explanation 1.—For the purposes of clause (ii), the individual, in computing whose total income the income referred to in that clause is to be included, shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater; and where any such income is once included in the total income of either spouse, any such income arising in any succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary so to do.”;

(h) *Explanation 1A* and *Explanation 2A* have been omitted;

(i) for *Explanation 3*, the following *Explanation 3* has been substituted, namely:—

"Explanation 3.—For the purposes of clauses (iv), (v) and (vi), where the assets transferred directly or indirectly by an individual to his spouse or minor child or son's wife or son's minor child (hereafter in this *Explanation* referred to as “the transferee”) are invested by the transferee,—

(i) in any business, such investment being not in the nature of contribution of capital as a partner in a firm or, as the case may be, for being admitted to the benefits of partnership in a firm, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day;

(ii) in the nature of contribution of capital as a partner in a firm or, as the case may be, for being admitted to the benefits of partnership in a firm, that part of the interest receivable by the transferee from the firm in any previous year, which bears the same proportion to the interest receivable by the transferee from the firm as the value of the investment aforesaid as on the first day of the previous year bears to the total investment by way of capital contribution as a partner in the firm as on the said day,

shall be included in the total income of the individual in that previous year.”.

ANNOTATIONS

No clubbing, for and from assessment year 1989-90, in respect of share income of the spouse or the minor child.—As a result of the omission of clauses (i) and (iii) of section 64(1) by the DTL(A) Act, 1987, there

will be no clubbing, for and from assessment year 1989-90, with the income of an individual, in respect of the share income of his or her spouse and/or minor child from a firm. Such omission is consequent upon the introduction of a new scheme of taxation of firms and its partners.

Exception to the applicability of section 64(1)(ii) made more specific.—Under the substituted proviso to section 64(1)(ii), the provisions of section 64(1)(ii) will have no application, for and from assessment year 1989-90, only if the income arises to the spouse from a firm carrying on a profession as is referred to in section 44AA(1) and the spouse possesses any technical or professional qualification in the nature of a degree or diploma of a University within the meaning of clause (c) of the *Explanation* below section 32A(2B).

Section 64(1)(iv) amended.—The amendment of section 64(1)(iv) is consequential to the omission of section 64(1)(i).

Section 64(1)(v) amended.—One of the amendments to section 64(1)(v) is consequential to the omission of section 64(1)(iii).

The omission of the brackets and words “(not being a married daughter)”, which qualify the term “minor child” used in section 64(1)(v) has been effected as such user was unnecessary. A similar omission has also been effected in section 64(1)(vii).

Explanation 1 substituted.—The substitution of *Explanation 1* to section 64(1) has effected only consequential amendments pursuant to the omission of clauses (i) and (iii) of section 64(1).

Explanations 1A and 2A omitted.—Such omission is consequential to the omission of clauses (i) and (iii) of section 64(1).

Explanation 3 substituted.—The existing *Explanation 3* to section 64(1) applies to clauses (iv) and (v) of section 64(1) only and clarifies that where the assets transferred by an individual to his/her spouse or his/her minor child are invested in any business, the income proportionate to the investment out of the transferred assets will be clubbed with the income of the transferor.

The newly substituted (w.e.f. 1-4-1989) *Explanation 3* has been made applicable also to clause (vi) of section 64(1) relating to assets transferred by an individual to his/her son's wife or son's minor child and has thus removed a lacuna in the existing provisions.

Further, the new *Explanation 3* excludes the clubbing of the income received from the firm, where the transferred assets are invested by way of contribution of capital as a partner in a firm or for being admitted to the benefits of partnership in a firm. However, the interest received from the firm on such capital contribution is to be clubbed with the income of the transferor.

Pages 1885-1886: section 67:

Substitution of new section for section 67.—By section 18 of the DTL(A) Act, 1987, the following section 67 has been substituted, w.e.f. 1-4-1989, namely:—

‘67. Method of computing a member’s share in the income of association of persons or body of individuals.—(1) In computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely:—

- (a) any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body;
- (b) where the amount apportioned to a member under clause (a) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be added to that amount, and the result shall be treated as the member’s share in the income of the association or body;
- (c) where the amount apportioned to a member under clause (a) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the member’s share in the income of the association or body.

(2) The share of a member in the income or loss of the association or body, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.

(3) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head “Profits and gains of business or profession” in respect of his share in the income of the association or body, be deducted from his share.

Explanation.—In this section, “paid” has the same meaning as is assigned to it in clause (2) of section 43.’.

ANNOTATIONS

Substituted section 67 prescribes method of computing a member's share income from an AOP, etc.—The existing section 67 prescribes method of computing a partner's share in the income of a firm. As such computation is no longer necessary in view of the full exemption granted, under s. 10(2A), for and from assessment year 1989-90, to a partner in respect of his share in the total income of the firm. In that view of the matter, the substituted s. 67 prescribes the method of computing a member's share in the income of an association of persons or a body of individuals, wherein the shares of the members are determinate. The substituted section 67 follows the same manner for such computation as provided for in the existing section 67, with the exception that the provisions of section 67(4), which deals with the set off or carried forward of share of loss of a partner in a registered firm or in an unregistered firm assessed as a registered firm, do not find place in the substituted section 67 as there are no provisions in the Act for set off or carry forward of the share of loss of a member in an association or a body in his own assessment.

Page 2002: section 75:

Omission of section 75.—By section 19 of the DTL(A) Act, 1987, section 75, dealing with losses of registered firms, has been omitted, w.e.f. 1-4-1989, consequent upon introduction of a new scheme, in section 167A, for taxation of firms eliminating the distinction between registered firms and unregistered firms, as also of a new section 10(2A) exempting share income of partners in firms from tax.

Page 2004: section 76:

Omission of section 76.—By section 19 of the DTL(A) Act, 1987, section 76, dealing with losses of unregistered firms assessed as registered firms, has been omitted, w.e.f. 1-4-1989, consequent upon introduction of a new scheme, in section 167A, for taxation of firms eliminating the distinction between the registered firms and unregistered firms, as also of a new section 10(2A) exempting share income of partners in firms from tax.

Page 2005: section 77:

Omission of section 77.—By section 19 of the DTL(A) Act, 1987, section 77, dealing with losses of unregistered firms or their partners, has been omitted, w.e.f. 1-4-1989, consequent upon introduction of a new scheme, in section 167A, of taxation of firms eliminating the distinction between the registered firms and unregistered firms, as also of a new section 10(2A) exempting share income of partners in firms from tax.

Page 2009: section 78:

Amendment of section 78.—By section 20 of the DTL(A) Act, 1987, the following section 78(1) has been substituted, w.e.f. 1-4-1989, namely:—

“(1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.”.

ANNOTATIONS

Section 78(1) substituted.—Under the existing provisions of section 78(1), where a change has occurred in the constitution of the firm, the share of loss of the retiring or deceased partner is not allowed to be carried forward to be set off against the income of the firm after the change. This sub-section also prohibits any partner from taking the benefit of any portion of the said loss which is not apportionable to him under section 67.

The new section 78(1), operative for and from assessment year 1989-90, provides that where a change has occurred in the constitution of the firm, the share of loss of the out-going partners is not to be carried forward to be set off against the income of the new firm. It does not contain the latter part of the original section 78(1) relating to partners, as the same has become redundant in view of the new scheme for taxation of firms whereby the share of a partner in firm's total income is not to be taxed in his hands.

Page 2016: section 80:

Amendment of section 80.—By section 126(10) of the DTL(A) Act, 1987, in section 80, for the words, brackets and figures “within the time allowed under sub-section (1) of section 139 or within such further time as may be allowed by the Income-tax Officer,” the words, brackets and figures “in accordance with the provisions of sub-section (3) of section 139” have been substituted, w.e.f. 1-4-1989. This amendment is consequential to the amendments made, by that Act, to section 139.

Pages 2040-2041: section 80A:

Amendment of section 80A.—By section 21 of the DTL(A) Act, 1987, the following section 80A(3) has been substituted, w.e.f. 1-4-1989, namely:—

“(3) Where in computing the total income of an association of persons or a body of individuals, any deduction is admissible under section 80G or section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80-I or section 80J, no deduction under the same section shall be made in computing the total income of a member of the association of persons or body of individuals in relation to the share of such member in the income of the association or body.”.

ANNOTATIONS

Section 80A(3) substituted.—The existing section 80A(3) lays down that where deductions under certain sections are allowed in the cases of the firm, association of persons or body of individuals, the same deductions are not to be allowed in the assessments of the partners or members in respect of shares from such firms, association of persons or body of individuals. These provisions are no longer necessary in the case of a firm and its partners in view of the new scheme for taxation of firms whereby the shares of partners in the firm's income are not to be taxed in their hands. Therefore, under the substituted section 80A(3), reference to a firm and its partners has been taken out so that that section 80A(3) can have application only to the association of persons and body of individuals and their members.

Pages 2051-2052: section 80B:

Amendment of section 80B.—By section 22 of the DTL(A) Act, 1987, section 80B has been amended, w.e.f. 1-4-1989, as under:—

(1) Clause (2), defining 'domestic company', has been omitted consequent upon shifting the definition in the newly inserted section 2(22A).

(2) Clause (4), defining 'foreign company', has been omitted consequent upon shifting the definition in the newly inserted section 2(23A).

(3) Clause (6), defining 'income' in relation to a handicapped individual, and clause (8), defining 'relative', have been omitted as the then section 80D, for which these definitions were needed, was already omitted by the Finance Act, 1984, w.e.f. 1-4-1985.

Pages 2082-2086: section 80E:

Omission of section 80E.—By section 23 of the DTL(A) Act, 1987, section 80E, providing for deduction in respect of payment for securing retirement annuities in cases of partners of registered professional firms, has been omitted, w.e.f. 1-4-1989, which has become redundant as a result of the introduction of a new scheme of taxation of the firms and grant of exemption to a partner in respect of his share in the total income of the firm.

Page 2088: section 80F:

Insertion of new section 80F.—By section 24 of the DTL(A) Act, 1987, after section 80E as omitted by that Act, the following section 80F has been inserted, w.e.f. 1-4-1989, namely:—

'80F. Deduction in respect of amounts applied for charitable or religious purposes, etc.—(1) In computing the total income of an assessee, being—

- (a) a person in receipt of income derived from property held under trust wholly for charitable or religious purposes in India or by an institution established wholly for such purposes in India; or

- (b) a person in receipt of income derived from property held under trust in part only for charitable or religious purposes in India, the trust having been created before the commencement of this Act; or
- (c) a person in receipt of income derived from property held under a trust created on or after the 1st day of April, 1952, or by an institution established on or after that date, for a charitable purpose which is for the benefit of citizens of India abroad or which tends to promote international welfare in which India is interested; or
- (d) a trust or institution declared by the Board, by notification in the Official Gazette, to be a trust or institution of national importance, having regard to the objects set out in the instrument creating the trust or establishing the institution, the opinion of such experts in the respective fields of activity of the trust or institution as the Board may think fit to consult, and other relevant factors,

there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified hereunder, namely:—

- (i) any amount applied in India by the person referred to in clause (a), or by the trust or institution referred to in clause (d), during the previous year wholly and exclusively to the purposes of the trust or institution;
- (ii) any amount applied in India by the person referred to in clause (b) during the previous year wholly and exclusively to the charitable or religious purposes of the trust;
- (iii) any amount applied outside India by the person referred to in clause (c) during the previous year wholly and exclusively for the benefit of citizens of India abroad or for promoting international welfare in which India is interested, where the Board has, by general or special order, directed such amount to be deducted:

Provided that any such amount applied wholly and exclusively for the benefit of citizens of India abroad shall qualify for the deduction under this clause only if such amount is applied in accordance with a scheme framed by such person and approved by the Board and notified in the Official Gazette;

- (iv) any amount invested or deposited during the previous year in such form or mode, in such manner and for such period as may be prescribed, where such investment or deposit is held by such person or, as the case may be, trust or institution for a period of not less than six months ending with the due date for furnishing the return of income under sub-section (1) of section 139.

(2) The deduction under sub-section (1) shall not be allowed unless the following conditions are fulfilled, namely:—

- (a) the person in receipt of the income or, as the case may be, the trust or institution has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner or any other authority prescribed in this behalf before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution:

Provided that the Commissioner or the authority so prescribed may, in his or its discretion, admit an application for the registration of any trust or institution after the period aforesaid.

Explanation.—Where an application for registration of the trust or institution has been made to the Commissioner in accordance with the provisions of section 12A as it stood immediately before the 1st day of April, 1989, the requirements of this clause shall be deemed to have been complied with;

- (b) where the gross total income of the trust or institution for the previous year exceeds fifty thousand rupees, the accounts of the trust or institution for the previous year have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;
- (c) such other conditions as the Board may, having regard to the interests or quantum of the revenue, by general or special order, impose, and such conditions may include a condition that a nominee of the Board shall, notwithstanding anything contained in any other law for the time being in force or in any instrument constituting the trust or institution concerned or governing the working thereof, be appointed on the Board of trustees of the said trust or, as the case may be, the governing body of the institution.

(3) The deduction under sub-section (1) shall not be allowed where—

- (a) any part of the property of the trust or institution is held for a private religious purpose which does not enure for the benefit of the public or any part of the income from such property is applied to any such purpose as aforesaid;
- (b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of

this Act, the trust or institution is created or established for the benefit of any particular religious community or caste;

- (c) (i) in the case of a trust or an institution created or established after the commencement of this Act, any part of the income of the trust or institution, under the terms of the trust or the rules governing the institution, enures, or
- (ii) in the case of a trust or institution whenever created or established, any part of the income or any property of the trust or institution is, during the previous year, used or applied, in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether convertible into money or not) on any interested person; or
- (d) any funds of the trust or institution are invested or deposited, for any period during the previous year, otherwise than in any such form or mode, in such manner and for such period as is prescribed for the purposes of clause (iv) of sub-section (1):

Provided that the Chief Commissioner or the Commissioner may, if he is satisfied, on an application by the trust or institution, that the application of the provisions of sub-clause (i) or sub-clause (ii) of clause (c) would result in grave hardship to the trust or institution, allow the deduction wholly or to such extent as he may deem fit having regard to the extent of the benefit, amenity or perquisite derived or enjoyed by the interested person:

Provided further that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) of clause (c) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution in the manner specified in that clause, if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution.

(4) Without prejudice to the generality of the provisions of clause (c) of sub-section (3), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether convertible into money or not) on any interested person, if—

- (a) any part of the income or property of the trust or institution is, or continues to be, lent to any interested person for any period during the previous year without either adequate security or adequate interest or both;
- (b) any land, building or other property of the trust or institution is, or continues to be, made available for the use of any interested person for any period during the previous year without charging adequate rent or other compensation;

- (c) any amount is paid by way of salary, allowance or otherwise during the previous year to any interested person out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
- (d) the services of the trust or institution are made available to any interested person during the previous year without adequate remuneration or other compensation;
- (e) any share, security or other property is purchased by or on behalf of the trust or institution from any interested person during the previous year for a consideration which is more than adequate;
- (f) any share, security or other property is sold by or on behalf of the trust or institution to any interested person during the previous year for a consideration which is less than adequate;
- (g) any income or property of the trust or institution is diverted during the previous year in favour of any interested person:
Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property so diverted does not exceed one thousand rupees;
- (h) any funds of the trust or institution are, or continue to remain, invested for any period during the previous year in any concern in which any interested person has a substantial interest:

Provided that in a case where the aggregate of the funds of the trust or institution invested in a concern referred to in this clause does not exceed five per cent. of the capital of that concern, the deduction under sub-section (1) in respect of the amount referred to in clause (i) or clause (ii) of that sub-section shall not be denied in relation to the application of any income other than the income arising to the trust or institution from such investment, by reason only of this clause.

(5) Where deduction has been allowed under sub-section (1) for any previous year with reference to any amount referred to in clause (iv) of that sub-section and in any subsequent previous year the whole or any part of the investment or deposit in which such amount is held is realised or converted into cash, the amount so realised or converted into cash shall, notwithstanding anything contained in any other provision of this Act, be deemed to be the income of the assessee of the previous year in which it is so realised or converted and shall be chargeable to tax accordingly.

(6) The deduction under sub-section (1) shall not be allowable in a case where the whole or any part of the income of the person or,

as the case may be, trust or institution referred to in that sub-section is chargeable to income-tax, by virtue of the provisions of sections 60 to 63, as the income of the author of the trust or founder of the institution or any other person who has made a transfer of any income or asset to the trust or institution.

(7) Where the property referred to in clause (a) or clause (b) or clause (c) of sub-section (1) consists wholly or partly of a business undertaking, or any person, trust or institution referred to in clause (a) or clause (b) or clause (c) or clause (d) of that sub-section derives income from a business carried on by him or it, the foregoing provisions of this section shall apply subject to the following conditions and with the following modifications, namely:—

- (a) separate books of account are maintained by such person, trust or institution in respect of such business; such accounts are maintained on the cash system of accounting and are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288, and the person, trust or institution furnishes, along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;
- (b) in computing the profits and gains of such business, no deduction shall be allowed in respect of any expenditure which results directly or indirectly in the provision of any remuneration, perquisite, benefit or amenity to any interested person, whether for any services rendered or otherwise;
- (c) the provisions of sections 71 and 72 shall not be applicable in relation to any loss pertaining to such business;
- (d) any amount referred to in clause (i) or clause (ii) or clause (iii) of sub-section (1), in so far as such amount is applied out of the profits and gains of such business, shall qualify for the deduction under that sub-section, if—
 - (i) such amount is so applied during the previous year; or
 - (ii) such amount is so applied during the financial year next following the previous year and, until it is so applied, the amount is kept in deposit in a separate account in any scheduled bank and it is not utilised for any purpose which is not a purpose of the trust or institution, and any amount which is not so applied out of such deposit during the financial year aforesaid shall be chargeable to tax as the income under the head “Profits and gains of business or profession” of such person, trust or institution of the next following previous year and all the provisions of this Act shall apply accordingly;
- (e) any amount referred to in clause (iv) of sub-section (1) shall not be taken into account for the purpose of allowing

the deduction under that sub-section, in so far as such amount relates to the profits and gains of such business;

(f) without prejudice to the provisions of sub-section (3), the deduction under sub-section (1) shall not be allowed in a case where—

(i) such business consists, wholly or partly, in—

(A) the purchase and sale of any securities or shares; or

(B) money-lending or financing in any form; or

(C) speculation in securities or shares or any other commodities; or

(D) engaging in the conduct of, or participating in, any lottery or crossword puzzle, races including horse races, card games or other games of any sort or gambling or betting of any form or nature whatsoever; or

(E) such other activity as may be prescribed; or

(ii) the person, trust or institution aforesaid engages in any business transaction with any interested person or with any concern in which any interested person has a substantial interest;

(iii) such person, trust or institution enters into any partnership or joint venture or forms any association of persons or a body of individuals with any interested person or with any concern in which any interested person has a substantial interest.

(8) The Board may, by general or special order, direct that any power or authority conferred upon it under this section may, subject to such conditions and restrictions as it may think fit to impose, be exercised also by such officer not below the rank of a Commissioner as it may specify in the order.

Explanation 1.—For the purposes of this section,—

(a) “interested person” means—

(i) the author of the trust or the founder of the institution;

(ii) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds twenty-five thousand rupees;

(iii) where such author, founder or person is a Hindu undivided family, a member of the family or any relative of such member;

(iv) any trustee of the trust or manager (by whatever name called) of the institution;

(v) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(vi) any concern in which any of the persons referred to in

sub-clauses (i), (ii), (iii), (iv) and (v) has a substantial interest;

- (b) "relative", in relation to an individual, means,—
- (i) spouse of the individual;
 - (ii) brother or sister of the individual;
 - (iii) brother or sister of the spouse of the individual;
 - (iv) any lineal ascendant or descendant of the individual;
 - (v) any lineal ascendant or descendant of the spouse of the individual;
 - (vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);
 - (vii) any lineal ascendant or descendant of a brother or sister of either the individual or of the spouse of the individual;
- (c) "scheduled bank" shall have the same meaning as in clause (ii) of the *Explanation* to clause (vii) of sub-section (1) of section 36;
- (d) "trust" includes any other legal obligation;
- (e) any reference to "institution" shall be construed as including also a reference to "fund".

Explanation 2.—A trust or institution created or established for the benefit of scheduled castes, backward classes, scheduled tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (3).

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent. of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in clause (a) of *Explanation 1*;
- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in clause (a) of *Explanation 1* are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent. of the profits of such concern.

ANNOTATIONS

Allied omissions.—Section 7 of the DTL(A) Act, 1987, has omitted sections 11, 12, 12A and 13, w.e.f. 1-4-1989, relating to exemption of income of charitable and religious trusts and institutions. Further, sections 10(21),

10(23C)(iv) and (v), 35, 35CC, 35CCA and 35CCB have been omitted, w.e.f. 1-4-1989.

Introduction.—In the wake of such omissions, a new section 80F has been inserted, w.e.f. 1-4-1989, providing for a unified scheme for taxation of charitable and religious trusts, as also of institutions of national importance including those involved in scientific research, rural development and conservation of natural resources. With the insertion of a new section 80F, the gross total income of a charitable or religious trust or institution, etc., is to be computed, for and from assessment year 1989-90, in terms of section 80A and thereafter two special deductions—in respect of amount applied as also in respect of amount invested or deposited—are to be allowed in accordance with the provisions of new section 80F.

Voluntary contributions to form part of total income.—As a result of amendment of section 2(24)(iia), voluntary contributions received by such trusts, etc., are to form part of their total income, which is otherwise to be computed in the normal manner.

Categories of assessee eligible for deduction under new section 80F.—Clauses (a) to (d) of section 80F(1) enumerate the persons who are entitled to deduction under section 80F(1). These are—

- (a) a person in receipt of income derived from property held under trust wholly for charitable or religious purposes in India or by an institution established wholly for such purposes in India; or
- (b) a person in receipt of income derived from property held under trust in part only for charitable or religious purposes in India, the trust having been created before 1st April, 1962; or
- (c) a person in receipt of income derived from property held under a trust created on or after 1st April, 1952, or by an institution established on or after that date, for a charitable purpose which is for the benefit of citizens of India abroad or which tends to promote international welfare in which India is interested; or
- (d) a trust or institution declared by the Board, by notification in the Official Gazette, to be a trust or institution of national importance having regard to the objects set out in the instrument creating the trust or establishing the institution, the opinion of such experts in the respective fields of activity of the trust or institution as the Board may think fit to consult, and other relevant factors.

From a perusal of the above, it may be seen that above category (a) takes within its ambit a person covered by existing section 11(1)(a). The above category (b) covers the person falling within the provisions of section 11(1)(b). The above category (c) takes within its cover, apart from a person falling within the provisions of section 11(1)(c)(i), an institution established on or after 1-4-1952 for a charitable purpose which is for the benefit of citizens of India abroad. The above category (d) is a new one.

Thus, the existing provisions of section 11 have been enlarged to an extent.

Two deductions available.—Such eligible assessee is entitled to two deductions, as provided in clauses (i) to (iv) of section 80F(1). These are: (1) the amount actually spent by a trust or institution in fulfilment of its objects; and (2) the amount accumulated by it in specified investments provided such investments have been held by it for at least a period of six months ending on the due date of filing of the return of income. These deductions are provided in lieu of the total exemption hitherto granted to such trusts, etc., and will also take care of accumulation of their income to a larger extent than provided under the existing sub-sections (1), (2), (3A) and (5) of section 11, while taking away areas of discretion.

Conditions about registration, etc., to be fulfilled.—The new section 80F(2)(a) provides that any trust which does not apply for registration in the prescribed manner will not be eligible for deductions specified in section 80F. Section 80F(2)(b) provides that where the gross total income of a trust exceeds Rs. 50,000 (hitherto Rs. 25,000), its accounts must be audited and the return of income be accompanied by an audit report in the prescribed form. These conditions already exist in the existing section 12A. Further, section 80F(2)(c) empowers the Board to impose such other conditions as it thinks fit keeping in view the interests or quantum of the revenue, including the condition that a nominee of the Board will be appointed on the Board of trustees of the trust or the governing body of the institution.

Deductions, when not to be allowed.—Section 80F(3) specifies the circumstances in which a trust, etc., will not be eligible for deductions under section 80F(1). These are analogous to the existing provisions of section 13(1). Where the deduction to a trust or institution is denied under the circumstances that its income is deemed to have been used for providing any benefit, amenity or perquisite to any interested person in the trust, the Chief Commissioner or Commissioner has been empowered, on an application by the trust or institution, to allow the deduction wholly or to such extent as he may deem fit having regard to the extent of the benefit, amenity or perquisite enjoyed by the interested person.

Use and application for the benefit of interested persons.—Section 80F(4) provides for the circumstances in which income of a trust or institution is to be deemed to have been used for providing any benefit, amenity or perquisite to any interested person. Provision of any such benefit or amenity will disentitle the trusts, etc., from the benefit of the two special deductions mentioned in section 80F(1). It, broadly, incorporates the existing provisions contained in section 13(2).

Charge of tax on realisation and/or conversion of investment, etc., into cash.—Section 80F(5) provides that where a specified investment [deduction in respect whereof has already been allowed] held by a trust is realised,

the amount so realised is to be deemed to be the income of the trust of the previous year in which the investment is realised or converted into cash. Although this incorporates the principle of existing sub-sections (1B) and (3) of section 11, it is too harsh.

Provisions of sections 60 to 63 to have overriding effect.—Section 80F(6) provides that if any income of a trust or institution is of such a nature as to attract the provisions of sections 60 to 63 of the Act, it will not be eligible for deduction under section 80F(1). This incorporates the existing condition in section 11(1).

Special conditions for trusts, etc., carrying on business, etc.—Section 80F(7) deals with trusts or institutions carrying on or deriving income from business and specifies special conditions which are required to be satisfied by such trusts, etc., for grant of deduction under section 80F(1). These conditions include maintenance of accounts of the business on cash basis; prohibition of set off and carry forward and set off of business losses; and ineligibility of certain kinds of business expenditure. This enlarges the area of the existing sub-sections (4) and (4A) of section 11.

Power of delegation.—Section 80F(8) empowers the Board to delegate any power or authority, conferred upon it under this section, on an officer not below the rank of Commissioner. The delegation will be subject to such conditions and restrictions as the Board may think fit to impose.

Explanation 1.—The definition of the expression “interested person” in clause (a) of *Explanation 1* to section 80F incorporates the definition of that expression as given in the existing section 13(3).

The definition of the expression “relative” in clause (b) of *Explanation 1* to section 80F is similar to that contained in *Explanation 1* to the existing section 13.

The definition of the expression “scheduled bank” as contained in clause (c) of *Explanation 1* to section 80F is similar to that in the *Explanation* to the existing section 11(5)(iii).

The definition of the expression “trust” in clause (d) of *Explanation 1* to section 80F has been borrowed from *Explanation 1* to the existing section 13.

Clause (e) of *Explanation 1* to section 80F is new and it enacts that any reference to “institution” is, for the purposes of section 80F, to be construed as including also a reference to “fund”.

Explanation 2.—This *Explanation 2* to section 80F saves certain trusts or institutions from the purview of section 80F(3)(b) and it is a counterpart of *Explanation 2* to the existing section 13.

Explanation 3.—This *Explanation 3* to section 80F deals with persons deemed to have a substantial interest in a concern. It incorporates the provisions of *Explanation 3* to the existing section 13.

Pages 2090-2094: section 80G:

Amendment of section 80G.—I. By section 25 of the DTL(A) Act, 1987, section 80G has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1), in clause (i), for the words, brackets, figures and letter “sub-clause (iiia) or in”, the words, brackets, figures and letters “sub-clause (iiia) or sub-clause (iiid) or sub-clause (iiie) or” have been substituted;

(b) in sub-section (2), after sub-clause (iiic) of clause (a), the following sub-clauses (iiid) and (iiie) have been inserted, namely:—

“(iiid) the rural development fund set up and notified by the Central Government in this behalf, or

(iiie) a trust or institution of national importance referred to in clause (d) of sub-section (1) of section 80F which has as its main object the undertaking of scientific research or carrying out of any rural development programme or any programme of conservation of natural resources or of afforestation of wasteland; or”;

(c) for sub-section (4), the following sub-section (4) has been substituted, namely:—

“(4) Where the aggregate of the sums referred to in sub-clauses (iv), (v), (vi) and (vii) of clause (a) and in clause (b) of sub-section (2) exceeds ten per cent. of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), then the amount in excess of ten per cent. of the gross total income shall be ignored for the purpose of computing the aggregate of the sums in respect of which deduction is to be allowed under sub-section (1).”;

(d) in sub-section (5), for clause (i), the following clause (i) has been substituted, namely:—

“(i) where the institution or fund derives any income, such income would not be liable to be included in its total income under the provisions of clause (22) or clause (22A) or clause (23AA) or clause (23C) of clause 10, or the trust or institution [other than the trust or institution referred to in sub-clause (iiie) of clause (a) of sub-section (2)] is eligible for the deduction under section 80F”;

(e) in *Explanation 2*, for clauses (i) and (ii), the following clauses (i) and (ii) have been substituted, namely:—

“(i) that, subsequent to the donation, the trust or institution has become ineligible for the deduction under section 80F due to non-compliance with any of the provisions of that section;

- (ii) that the deduction under section 80F is denied in relation to the application of any income arising to it from any investment referred to in clause (h) of sub-section (4) of that section where the aggregate of the funds invested by it in a concern referred to in the said clause (h) does not exceed five per cent. of the capital of that concern;”.

II. Further, by section 126(11) of the DTL(A) Act, 1987, section 80G has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (5), in clause (v), the words, brackets and figures “or is an institution approved by the Central Government for the purposes of clause (23) of section 10,” have been omitted;

(b) *Explanation* 4 has been omitted.’.

ANNOTATIONS

Amended section 80G(1).—As a result of the amendment (effective from 1-4-1989) of section 80G(1)(i), the donations to the notified rural development fund covered by new section 80G(2)(a)(iiid) as also to trusts or institutions of national importance covered by new section 80G(2)(a)(iiie) are to qualify for 100% deduction under section 80G(1).

List of eligible donees widened.—As a result of the introduction (w.e.f. 1-4-1989) of two new sub-clauses (iiid) and (iiie) in clause (a) of section 80G(2), the list of eligible donees has been widened so as to include a rural development fund set up and notified by the Central Government in this behalf and also trusts or institutions of national importance referred to in clause (d) of section 80F(1) which are carrying on the following activities:—

- (a) scientific research;
- (b) rural development programmes;
- (c) programmes for conservation of natural resources or of afforestation of wasteland.

Withdrawal of upper limit of qualifying amount.—The substitution (w.e.f. 1-4-1989) of section 80G(4) has been made with a view to withdraw the upper limit of Rs. 5,00,000 in respect of the qualifying amount. The result of the substituted section 80G(4) is that only the upper limit of 10% of the gross total income would be applicable to most of the donations.

Substitution of section 80G(5)(i).—The substitution (w.e.f. 1-4-1989) of section 80G(5)(i) is consequent upon the omission of sections 10(23), 11 and 12 and insertion of a new section 80F. Further, reference to clause (23AA) of section 10 relating to exemption of the income of Regimental

Fund, etc., of the armed forces has also been included in clause (i) of section 80G(5) so that donations to such funds will also qualify for deduction equal to 50 per cent. of the sums donated.

Amendment of section 80G(5)(v).—The omission of a portion from section 80G(5)(v) is consequential to the omission of section 10(23), w.e.f. 1-4-1989.

Amendment of Explanation 2.—The substitution (w.e.f. 1-4-1989) of clauses (i) and (ii) of *Explanation 2* to section 80G is consequent upon the omission of sections 11 to 13 and insertion of a new section 80F.

Omission of Explanation 4.—This omission is consequential to the omission of section 10(23), w.e.f. 1-4-1989.

Pages 2111-2112: section 80GGA:

Omission of section 80GGA.—By section 26 of the DTL(A) Act, 1987, section 80GGA, providing for deduction in respect of donations for scientific research, etc., has been omitted, w.e.f. 1-4-1989, as such payment has been taken care of by the newly inserted section 80G(1)(iii).

Pages 2120-2122: section 80HHA:

Amendment of section 80HHA.—By section 126(12) of the DTL(A) Act, 1987, in section 80HHA, in the *Explanation*, for clause (a), the following clause (a) has been substituted w.e.f. 1-4-1989, namely:—

‘(a) “rural area” means any area other than—

- (i) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or
- (ii) an area within such distance, not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the stage of development of such area (including the extent of, and scope for, urbanisation of such area) and other relevant considerations specify in this behalf by notification in the Official Gazette;’

The above substitution is consequential to the omission, by that Act, of section 35CC.

Pages 2184-2186: section 80L:

Amendment of section 80L.—By section 27 of the DTL(A) Act, 1987,

the following section 80L(1)(va) has been inserted, w.e.f. 1-4-1988, namely:—

“(va) income received in respect of units of a Mutual Fund specified under clause (23D) of section 10;”.

ANNOTATIONS

Amendment of section 80L.—As a result of the insertion of a new clause (va) in section 80L(1), income received in respect of units of a Mutual Fund specified under the newly inserted section 10(23D) has become eligible for deduction under section 80L for and from assessment year 1988-89.

Pages 2225-2226: section 80QQ:

Omission of section 80QQ.—By section 28 of the DTL(A) Act, 1987, section 80QQ, providing for deduction in respect of profits and gains from the business of publication of books, has been omitted, w.e.f. 1-4-1989, as the same has become inoperative for and from assessment year 1986-87.

Pages 2263-2264: section 86:

Substitution of new section for section 86.—By section 29 of the DTL(A) Act, 1987, the following section 86 has been substituted, w.e.f. 1-4-1989, namely:—

“86. Share of member of an association of persons or body of individuals in the income of the association or body.—Where the assessee is a member of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], income-tax shall not be payable by the assessee in respect of his share in the income of the association or body computed in the manner provided in section 67:

Provided that,—

(a) where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate, under any of the provisions of this Act, the share of a member computed as aforesaid shall not be included in his total income;

(b) in any other case, the share of a member computed as aforesaid shall form part of his total income:

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.”.

ANNOTATIONS

Substituted section 86.—As a result of introduction of a new scheme for taxation of firms and its partners, the newly substituted section 86 deals only with the shares of members of an association of persons or a body of individuals in the income of the association or body, and provides that income-tax shall not be payable in respect of such share, although it shall form part of total income of the member.

The proviso to that section 86 lays down that where the association or body is taxed at the 'maximum marginal rate' or any higher rate, the share of the member shall not be included in his total income at all. It is further provided that where no income-tax is chargeable on the total income of the association or body, the share of a member therein shall be chargeable to tax as part of his total income.

Pages 2477-2478: sections 116 to 118:

Substitution of new sections for sections 116, 117 and 118.—By section 30 of the DTL(A) Act, 1987, the following sections 116, 117 and 118 have been substituted, w.e.f. 1-4-1988, namely:—

"116. Income-tax authorities.—There shall be the following classes of income-tax authorities for the purposes of this Act, namely:—

- (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),
- (b) Directors-General of Income-tax or Chief Commissioners of Income-tax,
- (c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),
- (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),
- (e) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
- (f) Income-tax Officers,
- (g) Tax Recovery Officers,
- (h) Inspectors of Income-tax.

117. Appointment of income-tax authorities.—(1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.

(2) Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorise the Board, or a Director-General, a Chief Commissioner or a Director or a Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner.

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

118. Control of income-tax authorities.—The Board may, by notification in the Official Gazette, direct that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification.”.

ANNOTATIONS

Substituted section 116.—The newly substituted section 116 includes certain new authorities which are presently functioning and redesignates some of the existing authorities. It also omits the authority “Appellate Assistant Commissioner” from the Act. The income-tax authorities now enumerated in the new section 116 are:

- (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963,
- (b) Directors-General of Income-tax or Chief Commissioners of Income-tax,
- (c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),
- (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),
- (e) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
- (f) Income-tax Officers,
- (g) Tax Recovery Officers,
- (h) Inspectors of Income-tax.

Substituted section 117.—The existing section 117 specifies elaborately the appointing authorities for the various authorities to be appointed under the Act. This elaborate description has been eliminated in the new section, in view of such matter having been covered by other statutory rules.

New section 117(1) empowers the Central Government to appoint such persons as it thinks fit to be the income-tax authorities. New section 117(2) empowers the Central Government to authorise the Board, a Director-General, a Chief Commissioner, a Director or a Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner. New section 117(3) empowers an income-tax authority authorised in this behalf

by the Board to appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

Substituted section 118.—The existing section 118 spells out the control over income-tax authorities. It describes in detail as to which income-tax authority will be subordinate to whom. The newly substituted section 118, instead of mentioning the controlling authorities in detail, empowers the Board to issue notification in the Official Gazette directing that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in the notification.

The substituted sections 116, 117 and 118 are to come into operation with effect from 1-4-1988.

Pages 2478-2479: section 119:

Amendment of section 119.—By section 31 of the DTL(A) Act, 1987, section 119 has been amended, w.e.f. 1-4-1988, as under:—

‘(a) in sub-section (2), in clause (b), for the words “the Commissioner or the Income-tax Officer”, the words and brackets “any income-tax authority, not being a Deputy Commissioner (Appeals) or Commissioner (Appeals)” have been substituted;

(b) sub-section (3) has been omitted.’

ANNOTATIONS

Section 119(2)(b) amended.—The amendment of section 119(2)(b) empowers, w.e.f. 1-4-1988, the Board to authorise any income-tax authority other than a Deputy Commissioner (Appeals) or Commissioner (Appeals) to admit a belated application or a claim for any exemption, deduction, refund, etc. The unamended section 119(2)(b) empowers the Board to authorise only the Commissioner of Income-tax or the Income-tax Officer to admit a belated application, etc.

Omission of section 119(3).—Section 119(3), which enjoins upon the Income-tax Officer to observe and follow instructions issued by his superiors under whom he is posted, has been omitted as the same has become unnecessary in view of the provisions of the newly substituted section 118.

Page 2499: section 120:

Substitution of new section for section 120.—By section 32 of the DTL(A) Act, 1987, the following section 120 has been substituted, w.e.f. 1-4-1988, namely:—

“120. **Jurisdiction of income-tax authorities.**—(1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to

such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely:—

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income; and
- (d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—

- (a) authorise any Director-General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
- (b) empower the Director-General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by a Deputy Commissioner, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Deputy Commissioner by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Deputy Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any

rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.”.

ANNOTATIONS

Combination of the provisions relating to the jurisdiction of income-tax authorities.—Under the existing provisions, operative upto 31-3-1988, the jurisdiction of various income-tax authorities are given in separate sections, viz., 120, 121, 121A, 122, 123, 124(1), 124(2) and 128. In essence, all these sections say that the income-tax authorities will perform their functions in the area or cover the persons, etc., assigned to them by the Board or the Commissioner of Income-tax, depending upon the rank of the income-tax authority. Sections 125, 125A, 126, 130 and 130A provide for jurisdiction under special circumstances.

Instead of mentioning the jurisdiction and powers of each income-tax authority separately, the new section 120 combines the provisions of all these sections mentioned in the preceding paragraph. New section 120 is to come into force with effect from 1-4-1988.

Jurisdiction of income-tax authorities.—The new section 120(1) provides that income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or assigned to, them by the Board.

Delegation of authority by Board possible.—The new section 120(2) empowers the Board to delegate the authority to authorise to any income-tax authority below it, so as to enable it to issue orders in writing for the exercise of the powers and performance of the functions by the authorities subordinate to it.

Criteria to be followed in issuing directions, etc.—The new section 120(3) provides that the Board or any other income-tax authority authorised by it, while issuing directions referred to in sub-sections (1) and (2), may have regard to any one or more of the following criteria:—

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income; and
- (d) cases or classes of cases.

Board's power of authorisation.—The new section 120(4) empowers the Board to issue general or special orders to—

- (a) authorise any Director-General or Director to perform such functions of any other income-tax authority, as may be assigned to him by the Board;
- (b) empower the Director-General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions assigned to an Assessing Officer in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, are to be exercised or performed by any Deputy Commissioner.

Concurrent jurisdiction.—The new section 120(5) makes provision for conferring concurrent jurisdiction on the Assessing Officers. It provides that directions and orders referred to in sub-sections (1) and (2) of section 120 may require, for the proper management of work, two or more Assessing Officers (whether or not of the same class) to perform functions concurrently. Where Assessing Officers performing concurrent functions are of different classes, the authority lower in rank among them has to exercise power and perform functions as the higher authority among them may direct.

Board's power to regulate matters relating to jurisdiction.—The new section 120(6) empowers the Board, notwithstanding anything contained in section 120 or section 124, to regulate matters concerning jurisdiction for purposes of furnishing of the return of income or the doing of any other thing under the Act by issue of notification in the Official Gazette.

Pages 2500, 2507, 2508, 2510, 2535-2536, 2538-2539, 2541, 2553, 2554, 2554-2555 and 2555-2556: sections 121, 121A, 122, 123, 125, 125A, 126, 128, 130 and 130A:

Omission of sections 121, 121A, 122, 123, 125, 125A, 126, 128, 130 and 130A.—By section 33 of the DTL(A) Act, 1987, the following sections, namely:—

- (1) section 121 dealing with jurisdiction of Commissioners;
- (2) section 121A dealing with jurisdiction of Commissioners (Appeals);
- (3) section 122 dealing with jurisdiction of Appellate Assistant Commissioners;
- (4) section 123 dealing with jurisdiction of Inspecting Assistant Commissioners;
- (5) section 125 dealing with powers of Commissioner respecting specified areas, cases, persons, etc.;

- (6) section 125A dealing with concurrent jurisdiction of Inspecting Assistant Commissioner and Income-tax Officer;
 - (7) section 126 dealing with powers of the Board respecting specified area, classes of persons or incomes;
 - (8) section 128 dealing with functions of Inspectors of Income-tax;
 - (9) section 130 dealing with Commissioner's competency to perform any function or functions; and
 - (10) section 130A dealing with Income-tax Officer's competency to perform any function or functions,
- have been omitted, w.e.f. 1-4-1988, as the provisions dealt with by these sections have been combined in a single section 120, newly substituted by that Act.

Pages 2514-2515: section 124:

Substitution of new section for section 124.—By section 34 of the DTL(A) Act, 1987, the following section 124 has been substituted, w.e.f. 1-4-1988, namely:—

“124. Jurisdiction of Assessing Officers.—(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director-General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors-General or Chief Commissioners or Commissioners, by the Directors-General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director-General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a) where he has made a return under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (1) of section 142 or under section 148 for the making of the return or by the notice under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120."

ANNOTATIONS

Jurisdiction of Assessing Officers.—The newly substituted (w.e.f. 1-4-1988) section 124 deals with the jurisdiction of Assessing Officers in place of the existing section 124 relating to the jurisdiction of the Income-tax Officers. The provisions of sub-sections (1) and (2) of the existing section 124 relating to jurisdiction of Income-tax Officers, having been merged, along with other sections, in the new section 120, do not find place in the new section 124. The provisions of the existing sub-sections (3) to (7) of section 124, with appropriate amendments, have been reproduced in sub-sections (1) to (5) of the new section 124. The amendments are—

- (i) Whenever there is a disagreement between two or more Directors-General or Chief Commissioners or Commissioners regarding jurisdiction of an Assessing Officer, the Board or such Directors-General or Chief Commissioners or Commissioners as may be authorised in this behalf by the Board through a notification, will be competent to decide the issue, instead of only the Board, as at present.
- (ii) The existing provisions for questioning the jurisdiction of an Income-tax Officer are that no person shall call in question his jurisdiction—
 - (a) where a return of income under section 139 has been filed, after the expiry of one month from the date of filing of

the return or after the completion of assessment, whichever is earlier;

- (b) where no such return has been filed, after the expiry of the time allowed by a notice under section 139(2) or 148 for making a return.

In view of the introduction of a new procedure of assessment, where issue of notice under section 139(2) is dispensed with and completion of assessment in all cases is also not necessary, it is now provided, w.e.f. 1-4-1988, that no person shall be entitled to call in question the jurisdiction of an Assessing Officer—

- (a) where a return of income under section 139(1) has been filed, after the expiry of one month from the date of service of notice under section 142(1) or 143(2) or service of intimation under section 143(1), or after the completion of assessment, whichever is earlier;
- (b) where no such return has been filed, after the expiry of the time allowed in a notice under section 142(1) or section 148 for furnishing the return, or the date of hearing specified in a notice issued before passing an order under section 144, whichever is earlier.

Pages 2542-2544: section 127:

Substitution of new section for section 127.—By section 35 of the DTL(A) Act, 1987, the following section 127 has been substituted, w.e.f. 1-4-1988, namely:—

‘127. Power to transfer cases.—(1) The Director-General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director-General or Chief Commissioner or Commissioner,—

- (a) where the Directors-General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director-General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors-General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director-General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word “case”, in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.’

ANNOTATIONS

Substituted section 127.—Under the existing provisions of section 127, operative upto 31-3-1988, the Commissioner or the Board can transfer cases from one or more income-tax authorities to other income-tax authorities. The Commissioner can transfer a case from one Officer to another provided both work under his jurisdiction. The Board too has similar power to transfer cases from one Officer to another irrespective of the fact that the two Officers are working under different Commissioners. Even where the Commissioners agree that the cases can be transferred among their Officers, the orders have to be passed by the Board.

The new section 127 incorporates the provisions of the existing section 127 with the following amendments:—

- (i) the powers of transfer of cases are given to the Director-General, Chief Commissioner or Commissioner instead of only to the Commissioner;
- (ii) cases can be transferred between the Assessing Officers working under different Directors-General or Chief Commissioners or Commissioners—

- (a) if the concerned Directors-General or Chief Commissioners or Commissioners agree, by the Director-General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred;
- (b) if the concerned Directors-General or Chief Commissioners or Commissioners do not agree, by the Board or any such Director-General, Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

Pages 2557-2558: section 131:

Amendment of section 131.—By section 36 of the DTL(A) Act, 1987, section 131 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1A), for the words “If the Assistant Director of Inspection”, the words, brackets and figures “If the Director-General or Director, or the authorised officer referred to in sub-section (1) of section 132, before he takes action under clauses (i) to (v) of that sub-section,” have been substituted;

(b) sub-section (2) has been omitted.’

ANNOTATIONS

Scope of section 131(1A) extended.—As a result of the amendment (effective from 1-4-1989) of section 131(1A), a Director-General or Director and also an authorised officer under section 132(1), before he takes search and seizure action mentioned in clauses (i) to (v) of section 132(1), have been enabled to exercise powers regarding discovery, production of evidence, etc., under section 131(1) even when no proceedings are pending before them.

Omission of section 131(2).—Section 131(2), relating to imposition of fine for non-compliance with the summons issued under section 131, has been omitted consequent upon the inclusion of such penal provision in the newly substituted (w.e.f. 1-4-1989) section 272A(1)(c).

Pages 2568-2574: section 132:

Amendment of section 132.—I. By section 37 of the DTL(A) Act, 1987, section 132 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1),—

(i) for the words “or Income-tax Officer” occurring in clauses (A) and (B), the words “Assistant Commissioner or Income-tax Officer” have been substituted;

(ii) in the proviso, for the word and figures “section 121”, the word and figures “section 120” have been substituted;

(b) in sub-section (1A), for the word and figures "section 121", the word and figures "section 120" have been substituted;

(c) in sub-section (3), the following *Explanation* has been inserted at the end, namely:—

"Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).";

(d) in sub-section (4), the following *Explanation* has been inserted at the end, namely:—

"Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.";

(e) after sub-section (8), the following sub-section (8A) has been inserted, namely:—

"(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorised officer, for reasons to be recorded by him in writing, extends the period of operation of the order beyond sixty days, after obtaining the approval of the Commissioner for such extension:

Provided that the Commissioner shall not approve the extension of the period for any period beyond the expiry of thirty days after the completion of all the proceedings under this Act in respect of the years for which the books of account, other documents money, bullion, jewellery or other valuable articles or things are relevant.";

(f) in *Explanation 1*, for the words, brackets and figure "the period of one hundred and twenty days for the purposes of sub-section (5)", the words, brackets and figure "the period referred to in sub-section (5) for the purposes of that sub-section" have been substituted.'.

ANNOTATIONS

Amendment of section 132.—Under the existing provisions of section 132 (1), the authorised officer, who is conducting the search, may seize the books of account, documents, money, bullion, jewellery or other valuable articles or things found during the search, if the same are unaccounted for.

Section 132(3) empowers the authorised officer to issue a prohibitory order on a person in control of such documents or valuable articles, etc., directing him not to remove, part with or otherwise deal with them without his permission, if he finds it not practicable to seize them. There is no time limit up to which such a prohibitory order can be in force. Section 132(4) empowers the authorised officer to examine on oath any person found to be in possession or control of any books of account, valuable articles, etc., during the search. He cannot, however, examine all the persons present in the premises at the time of the search, unless they are in possession or control of the documents or valuables, etc. Section 132(5) provides that where any money, valuable articles, etc., have been seized, the Income-tax Officer has to pass a summary order within 120 days of the seizure determining the extent of concealed income, calculate the tax, penalty and interest thereon and appropriate the seized assets against the liability so determined or against any other existing liability of the assessee.

The amendments to sub-sections (1) and (1A) of section 132 are instances of gross negligence on the part of the draftsman in view of the amendments effected therein by section 126(13) of the DTL(A) Act, 1987, w.e.f. 1-4-1988.

The insertion (w.e.f. 1-4-1989) of *Explanation* at the end of section 132(3) clarifies that a prohibitory order under section 132(3) does not amount to seizure.

The newly inserted (w.e.f. 1-4-1989) *Explanation* at the end of section 132(4) clarifies that examination on oath mentioned therein need not be confined to the things, etc., found during the search but can also be for the purpose of general investigation. This *Explanation* nullifies the effect of the decision of the Bombay High Court in *R. R. Gavit v Smt. Sherbanoo Hasan Daya* [(1986) 161 ITR 793 (Bom)].

The newly inserted (w.e.f. 1-4-1989) section 132(8A) provides that a prohibitory order under section 132(3) will not be operative for a period exceeding 60 days from the date of the order, unless the authorised officer records reasons in writing and obtains the approval of the Commissioner to such extension. It is further provided that the Commissioner shall not approve the extension of the period beyond the expiry of 30 days after the completion of all the proceedings under the Act in respect of the years for which the books of account, documents, money, bullion, jewellery or other valuable articles or things are relevant.

The amendment of *Explanation* 1 to section 132 is of a consequential nature.

II. Further, by section 126(13) of the DTL(A) Act, 1987, in section 132, in sub-section (1), in the proviso and in sub-section (1A), the words and figures "notwithstanding anything contained in section 121" have been omitted with effect from the 1st day of April, 1988. This amendment is consequential to the omission, by that Act, of section 121.

Pages 2625-2627: section 132A:

Amendment of section 132A.—By section 38 of the DTL(A) Act, 1987, in section 132A(1), for the words “or Income-tax Officer”, the words “, Assistant Commissioner or Income-tax Officer” have been substituted, w.e.f. 1-4-1989.

ANNOTATIONS

The above amendment is of a consequential nature in relation to power to requisition books of accounts, etc., by substituting reference to “Income-tax Officer” with reference to “Assistant Commissioner or Income-tax Officer”.

Pages 2628-2629: section 132B:

Amendment of section 132B.—By section 126(14) of the DTL(A) Act, 1987, in section 132B, in sub-section (1), in clause (iii), for the words “the Income-tax Officer”, wherever they occur, the words “the Assessing Officer or, as the case may be, Tax Recovery Officer” have been substituted, w.e.f. 1-4-1989. This amendment is of a consequential nature.

Pages 2632-2633: section 133:

Amendment of section 133.—By section 39 of the DTL(A) Act, 1987, section 133 has been amended, w.e.f. 1-4-1989, as under:—

(a) in clause (4), for the words “four hundred rupees”, the words “one thousand rupees, or such higher amount as may be prescribed” have been substituted;

(b) the following proviso has been added at the end, namely:—

|| “Provided that the powers referred to in clause (6) may also be exercised by the Director-General, the Chief Commissioner, the Director and the Commissioner.”.

ANNOTATIONS

Section 133(4) amended.—The existing section 133(4) relates to furnishing of a statement of the names and addresses of all the persons to whom the assessee has paid in any year rent, interest, commission, etc., exceeding Rs. 400. This limit has, with effect from 1-4-1989, been raised to Rs. 1,000 and the Board has been empowered to raise the monetary limit further through rules as per the amended section 133(4).

Proviso to section 133 added.—The newly added (w.e.f. 1-4-1989) proviso to section 133 provides that the Director-General, Chief Commissioner, the Director and the Commissioner can also call for the information from any person (including a banking company) referred to in section 133(6), which at present can be called for by the Income-tax Officer, the Inspecting Assistant Commissioner, Appellate Assistant Commissioner or Commissioner (Appeals) only.

Pages 2636-2638: section 133A:

Amendment of section 133A.—I. By section 40 of the DTL(A) Act, 1987, in clause (a) of the *Explanation* to section 133A, for the words “if so authorised by the Income-tax Officer”, the words “if so authorised by any such authority” have been substituted, w.e.f. 1-4-1989.

ANNOTATIONS

Explanation (a) to section 133A amended.—The amendment to clause (a) of the *Explanation* to section 133A secures that instead of only the Income-tax Officer, as at present, any income-tax authority mentioned in this section (which means an Assistant Commissioner, an Assistant Director or an Income-tax Officer) can authorise (w.e.f. 1-4-1989) Inspectors of Income-tax to conduct survey.

II. Further, by section 126(15) of the DTL(A) Act, 1987, in section 133A, in sub-section (6), for the words, brackets and figures “sub-sections (1) and (2) of section 131”, the words, brackets and figures “sub-section (1) of section 131” have been substituted, w.e.f. 1-4-1989. This amendment is consequential to the omission, by that Act, of section 131(2).

Pages 2649-2650: section 138:

Amendment of section 138(1).—By section 41 of the DTL(A) Act, 1987, section 138(1) has been amended, w.e.f. 1-4-1989, as under:—

‘(i) in clause (a), for the words and figures “relating to any assessee in respect of any assessment made under this Act or under the Indian Income-tax Act, 1922 (11 of 1922)”, the following has been substituted, namely:—

|| “received or obtained by any income-tax authority in the performance of his functions under this Act”;

(ii) in clause (b),—

(1) for the words, figures and letters “in respect of any assessment made under this Act or the Indian Income-tax Act, 1922 (11 of 1922), on or after the 1st day of April, 1960”, the words “received or obtained by any income-tax authority in the performance of his functions under this Act” have been substituted;

(2) the words “in respect of that assessment only” have been omitted.’

ANNOTATIONS

Section 138(1) amended.—The amendment of section 138(1)(a) removes (w.e.f. 1-4-1989) the condition that the information to be passed on to the other Government department must relate to an assessee and to a completed assessment. Instead, it is provided (w.e.f. 1-4-1989) that any information received or obtained by any income-tax authority in the performance of his functions under the Act may be disclosed.

The amended section 138(1)(b) empowers (w.e.f. 1-4-1989) the Commissioner to disclose information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under the Act, whether an assessment has been completed or not.

Pages 2662-2670: section 139:

Amendment of section 139.—I. By section 42 of the DTL(A) Act, 1987, section 139 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) for sub-section (1), the following sub-section (1) has been substituted, namely:—

‘(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

Explanation.—In this sub-section, “due date” means—

- (a) where the assessee is a company, the 31st day of December of the assessment year;
- (b) where the assessee is a person, other than a company,—
 - (i) in a case where the accounts of the assessee are required under this Act or any other law to be audited, or in the case of a co-operative society, the 31st day of October of the assessment year;
 - (ii) in a case where the total income referred to in this sub-section includes any income from business or profession, not being a case falling under sub-clause (i), the 31st day of August of the assessment year;
 - (iii) in any other case, the 30th day of June of the assessment year.’;

(b) sub-section (2) has been omitted;

(c) in sub-section (3) [as amended by section 12 of the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986)],—

(i) the words, brackets and figure “has not been served with a notice under sub-section (2),” have been omitted;

(ii) the words "or by the thirty-first day of July of the assessment year relevant to the previous year during which the loss was sustained" have been omitted;

(d) for sub-sections (4) and (4A), the following sub-sections (4) and (4A) have been substituted, namely:—

"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.

(4A) Every person, trust or institution referred to in sub-section (1) of section 80F shall, if the total income in respect of which such person, trust or institution is assessable (the total income for this purpose being computed without giving effect to the provisions of that section) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).";

(e) for sub-section (5), the following sub-section (5) has been substituted, namely:—

"(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:

Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.";

(f) in sub-sections (6) and (6A), for the words, brackets and figures "in sub-sections (1), (2) and (3)", the words, brackets and figures "in sub-sections (1) and (3) of this section, and in clause (i) of sub-section (1) of section 142" have been substituted;

(g) sub-section (7) has been omitted;

(h) in sub-section (8), after clause (b), the following clause (c) has been inserted, namely:—

“(c) The provisions of this sub-section shall apply in respect of the assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references therein to the other provisions of this Act shall be construed as references to the said provisions as they were applicable to the relevant assessment year.”;

(i) in sub-section (10), in the proviso, for clauses (c) and (d), the following clauses (c) and (d) have been substituted, namely:—

“(c) a return of loss which has been furnished in accordance with the provisions of sub-section (3);

(d) a return furnished under sub-section (4A), in respect of a person, trust or institution referred to in sub-section (1) of section 80F;”.

ANNOTATIONS

Due dates for filing returns of income.—The existing section 139(1) prescribes different time limits for filing of the return of income by assesseees having income from business and by those having income from sources other than business. The existing due dates are either 30th June or 31st July. The newly substituted section 139(1) staggers further the dates for filing the returns by different classes of assesseees. The due dates, w.e.f. 1-4-1989, are as under:—

- | | |
|--|---|
| (1) where the assessee is a company, | 31st day of December of the assessment year |
| (2) where the assessee is a person other than a company— | |
| (i) who is required to get his accounts audited under the Income-tax Act or any other law, or in the case of a co-operative society, | 31st day of October of the assessment year |
| (ii) deriving income from business or profession, who does not fall under item (i) above, | 31st day of August of the assessment year |
| (iii) in any other case, | 30th day of June of the assessment year. |

The proviso to the existing section 139(1), which allows discretion to the Income-tax Officer, on an application made by the assessee, to extend

the date for filing the return of income, does not find place in the new section 139(1). Consequently, the Income-tax Officer will not have any power to extend the dates of filing the returns, and thus the dates mentioned above are mandatory.

Omission of section 139(2).—Section 139(2), dealing with the issue of a notice by the Income-tax Officer calling for furnishing the return of income, has been omitted. It may be noted that such provisions, in a modified form, have been carried to the newly inserted clause (i) to section 142(1).

Furnishing of loss return.—The amendments in section 139(3), relating to furnishing of loss return by an assessee, are consequent upon omission of section 139(2) and substitution of a new section 139(1) making provisions of staggered dates for filing the returns of income. Under the amended section 139(3), a loss return can be filed by the four due dates mentioned in section 139(1), depending upon the category in which a particular case falls.

Substituted section 139(4).—Under the existing section 139(4), a return not filed by the due date can still be filed within two years from the end of the relevant assessment year, if the assessment has not been completed. The new section 139(4) provides that such a belated return can be filed within one year from the end of the relevant assessment year. A proviso to the new section 139(4) clarifies that in case the return relates to assessment year-1988-89 or an earlier year, the reference to one year shall be construed as reference to two years from the end of the relevant assessment year.

Substituted section 139(4A).—The existing section 139(4A) relates to the filing of returns by trusts or institutions for charitable or religious purposes, whose income is exempt under the provisions of sections 11 and 12. The new section 139(4A) (effective from 1-4-1989) incorporates amendments consequent upon the omission of the provisions of sections 11 to 13 and insertion of a new section 80F.

Substituted section 139(5).—The newly substituted (w.e.f. 1-4-1989) section 139(5) provides that a revised return can also be filed within one year from the end of the relevant assessment year instead of two years at present. The proviso to new section 139(5) clarifies that in case of a return relating to assessment year 1988-89 or any earlier year, the reference to one year shall be construed as reference to two years from the end of the relevant assessment year.

Amendment of sub-sections (6) and (6A) of section 139.—The amendments made in sub-sections (6) and (6A) of section 139 are of consequential nature pursuant to the omission of section 139(2) and insertion of a new section 142(1)(i), w.e.f. 1-4-1989.

Omission of section 139(7).—The omission (w.e.f. 1-4-1989) of section 139(7) has been effected as its provisions have become redundant consequent upon the omission of section 139(2).

Applicability of section 139(8) restrained upto assessment year 1988-89.—The newly inserted (w.e.f. 1-4-1989) clause (c) of section 139(8) enacts a terminal clause and restrains the applicability of the provisions of section 139(8), relating to charging of interest for late filing, or not filing, of a return of income, upto and including the assessment year 1988-89. It may be noted that, for and from assessment year 1989-90, charging of the mandatory interest for late filing, or not filing, of return of income is to be done under the provisions of the newly inserted section 234A.

Amendment of section 139(10).—The substitution (w.e.f. 1-4-1989) of clauses (c) and (d) of the proviso to section 139(10) is consequent to the amendments made in section 139(3), relating to furnishing of returns of losses, as also in section 139(4A), relating to furnishing of returns of income by charitable or religious trusts, etc.

II. Further, by section 126(16) of the DTL(A) Act, 1987, in section 139, in sub-section (8), in clause (b), after the word and figures “section 264”, the words, brackets, figures and letter “or an order of the Settlement Commission under sub-section (4) of section 245D” have been inserted, w.e.f. 1-4-1989. As a consequence of this amendment, where as a result of an order of the Settlement Commission under section 245D(4), the amount of tax on which interest is payable under section 139(8) has been reduced, the interest has to be reduced accordingly and the excess interest paid, if any, has to be refunded.

Pages 2719-2720: section 139A:

Amendment of section 139A.—By section 43 of the DTL(A) Act, 1987, section 139A has been amended, w.e.f. 1-4-1989, as under:—

‘(i) in sub-sections (1) and (2), for the words “any accounting year” the words “any previous year” have been substituted;

(ii) in sub-section (6), after clause (b), the following clause (c) has been inserted, namely:—

|| “(c) the categories of documents pertaining to business or profession of the persons to whom permanent account numbers have been allotted, in which such numbers shall be quoted by them.”;

(iii) in the *Explanation*, clause (a) has been omitted.’

ANNOTATIONS

The effect of the amendments made (w.e.f. 1-4-1989) in section 139A is as under:—

(1) The reference in sub-sections (1) and (2) of section 139A to “any accounting year” has been substituted by a reference to “any previous year”.

(2) As a result of the insertion of clause (c) in section 139A(6), the

Board has also been empowered to prescribe the categories of documents on which the permanent account numbers are to be quoted by the businessmen, etc., to whom such numbers have been allotted.

(3) The definition of the expression "accounting year", coined in clause (a) of the *Explanation* to section 139A, has been omitted consequent upon the amendments of sections 139A(1) and 139A(2).

Page 2721: section 140:

Amendment of section 140.—By section 44 of the DTL(A) Act, 1987, section 140 has been amended, w.e.f. 1-4-1989, as under:—

'(i) for clause (a), the following clause (a) has been substituted, namely:—

"(a) in the case of an individual,—

- (i) by the individual himself;
- (ii) where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf;
- (iii) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and
- (iv) where, for any other reason, it is not possible for the individual to sign the return, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii) or sub-clause (iv), the person signing the return holds a valid power of attorney from the individual to do so, which shall be attached to the return;";

(ii) to clause (c), the following provisos have been added, namely:—

"Provided that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return:

Provided further that,—

- (a) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be signed and verified by the liquidator referred to in sub-section (1) of section 178;
- (b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof;";

(iii) after clause (d), the following clause (dd) has been inserted, namely:—

"(dd) in the case of a political party referred to in sub-section (4B) of section 139, by the chief executive officer of such party (whether such chief executive officer is known as secretary or by any other designation);".

ANNOTATIONS

Signing of returns by an individual through his power-of-attorney holder.—Under the substituted (w.e.f. 1-4-1989) section 140(a)(iv), where, for any other reason, it is not possible for an individual to sign the return personally, a return may be signed by any person duly authorised by such individual in this behalf, provided the power-of-attorney is attached with the return. Further, where, due to absence of the individual from India, a return is signed by an authorised person, the power-of-attorney in that regard has been required (w.e.f. 1-4-1989) to be attached with the return so signed.

Signing of returns by a company.—The newly added (w.e.f. 1-4-1989) first proviso to section 140(c) provides that in the case of a non-resident company, the return can be signed by a person holding a valid power-of-attorney in that behalf, provided such power-of-attorney is attached with the return.

The newly added (w.e.f. 1-4-1989) second proviso to section 140(c) provides that—

- (i) where the company is being wound up, the liquidator of the company under liquidation is to sign and verify the return; and
- (ii) where the management of the company has been taken over by the Central Government or State Government, the principal officer is to sign and verify the return.

Signing of returns by a political party.—The newly inserted (w.e.f. 1-4-1989) clause (dd) of section 140 provides that the chief executive officer of a political party referred to in section 139(4B) shall be the person competent to sign and verify the return of such a political party.

Pages 2724-2725: section 140A:

Amendment of section 140A.—By section 45 of the DTL(A) Act, 1987, section 140A has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1),—

(i) for the words “the assessee shall be liable to pay such tax before furnishing the return and the return shall be accompanied by proof of payment of such tax”, the following has been substituted, namely:—

“the assessee shall be liable to pay such tax, together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest”;

(ii) the following *Explanation* has been inserted at the end, namely:—

“*Explanation.*—Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.”;

(b) for sub-section (3), the following sub-section (3) has been substituted, namely:—

“(3) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid, and all the provisions of this Act shall apply accordingly.”.

ANNOTATIONS

Payment of interest made mandatory.—The amendment to section 140A(1) makes it mandatory for an assessee also to pay interest for—

—non-payment or short payment of advance tax, as per new section 234B;

—deferment of payment of advance tax, as per section 234C; and

—for late filing of return, as per section 234A,
along with self-assessment tax.

Payment first to be adjusted against interest.—The newly inserted (w.e.f. 1-4-1989) *Explanation* at the end of section 140A(1) clarifies that where the assessee pays only part of the amount due at the time of filing the return, such payment will first be adjusted towards interest, and the balance, if any, will be adjusted towards self-assessment tax.

No penalty under section 140A(3).—As a result of the substitution of a new sub-section (3) in place of the existing sub-section (3) of section 140A, there is no provision, w.e.f. 1-4-1989, for levying penalty for non-payment of self-assessment tax. However, penalty may be levied under section 221(1).

Failure to comply with amended section 140A(1) makes the assessee a defaulter.—Under the substituted (w.e.f. 1-4-1989) section 140A(3), if any assessee has not paid the self-assessment tax and interest in full before filing the return, he shall be deemed to be an assessee in default.

Pages 2734-2736: section 141A:

Omission of section 141A.—By section 46 of the DTL(A) Act, 1987, section 141A, relating to provisional assessment for refund, has been omitted, w.e.f. 1-4-1989. The omission is consequent upon the introduction of a new scheme of assessment in the newly substituted section 143.

Pages 2742-2743: section 142:

Amendment of section 142.—By section 47 of the DTL(A) Act, 1987, section 142 has been amended, w.e.f. 1-4-1989, as under:—

'(a) in the opening paragraph, for the words, brackets and figures "or to whom a notice has been issued under sub-section (2) of section 139 (whether a return has been made or not)", the words, brackets and figure "or in whose case the time allowed under sub-section (1) of that section for furnishing the return has expired" have been substituted;

(b) clauses (i) and (ii) have been re-numbered as clauses (ii) and (iii) thereof respectively, and before clause (ii) as so re-numbered, the following clause (i) has been inserted, namely:—

“(i) where such person has not made a return before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or”.

ANNOTATIONS

Failure to file return by due date empowers issuance of notice under section 142(1).—Under the amended (w.e.f. 1-4-1989) section 142(1), opening paragraph, a notice under section 142(1) can also be issued to an assessee who has not filed his return of income by the due date fixed under section 139(1). The amended section 142(1) excludes reference to section 139(2) consequent upon latter's omission.

Issue of notice calling for return possible.—The newly inserted (w.e.f. 1-4-1989) clause (i) of section 142(1) confers a power to issue a notice calling for return of income, where the return has not been filed voluntarily before the end of the relevant assessment year.

Pages 2755-2758: section 143:

Substitution of new section for section 143.—By section 48 of the DTL(A) Act, 1987, the following section 143 has been substituted, w.e.f. 1-4-1989, namely:—

“143. Assessment.—(1) (a) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142,—

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and

- (ii) if any refund is due on the basis of such return, it shall be granted to the assessee:

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in the return, namely:—

- (i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;
- (ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is *prima facie* admissible but which is not claimed in the return, shall be allowed;
- (iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is *prima facie* inadmissible, shall be disallowed.

(b) Where as a result of an order made under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, or any order of settlement made under sub-section (4) of section 245D relating to any earlier assessment year and passed subsequent to the filing of the return referred to in clause (a), there is any variation in the carry forward loss, deduction, allowance or relief claimed in the return, and as a result of which,—

- (i) if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly, and
- (ii) if any refund is due, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial year in which any such order was passed.

(2) In a case referred to in sub-section (1), if the Assessing Officer considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, he shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of the financial year in which the return is furnished or the expiry of six months from the end of the month in which the return is furnished, whichever is later.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assess-

ing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment.”.

ANNOTATIONS

Recasting of section 143.—Under the existing provisions of section 143 (operative upto 31-3-1989), after a return of income has been filed, the Income-tax Officer may make an assessment under section 143(1) without requiring the presence of the assessee or production by him of any evidence in support of the return. Where the assessee objects to such an assessment or where the Income-tax Officer is of the opinion that the assessment so made is incorrect or incomplete, or in a case where the Income-tax Officer does not complete the assessment under section 143(1), but wants to make an enquiry, a notice under section 143(2) may be issued to the assessee requiring him to produce evidence in support of his return. After considering the material and evidence produced by the assessee and after making necessary enquiries, the Income-tax Officer makes the assessment under section 143(3).

The newly substituted (w.e.f. 1-4-1989) section 143 has completely recast the existing provisions of section 143 so as to provide for a new scheme of assessment whereunder the requirement of passing an assessment order in all cases where returns are filed is dispensed with.

No assessment order but intimation of tax payable is sufficient under the new scheme—new section 143(1)(a).—The newly substituted (w.e.f. 1-4-1989) section 143(1)(a) provides that where a return has been filed under section 139 or under section 142(1),—

- (i) if any tax or interest is found due on the basis of such return, an intimation is to be sent to the assessee specifying the sum so payable and such intimation is to be deemed to be a notice of demand issued under section 156; and
- (ii) if any refund is due on the basis of such return, it is to be granted to the assessee.

The proviso to new section 143(1)(a) allows the department to make certain adjustments in the returned income or loss.

Intimation also sufficient for consequential variation in tax payable—new section 143(1)(b).—The newly substituted (w.e.f. 1-4-1989) section 143(1)(b) provides that where as a result of any of the appellate, revisional or settlement order mentioned in the clause relating to any earlier assessment year and passed subsequent to the filing of the return referred to in clause

(ii), there is any variation in the carry forward loss, deduction, etc., claimed in the return, then,—

(i) if any tax or interest is found due, an intimation is to be sent to the assessee specifying the sum so payable, and

(ii) if any refund is due, it is to be granted to the assessee.

However, an intimation for any tax or interest due under this clause is not to be sent after the expiry of four years from the end of the financial year in which any such order was passed.

Issue of notice to substantiate the return filed—new section 143(2).—Where a return has been filed under section 139 or under section 142(1), the newly substituted (w.e.f. 1-4-1989) section 143(2) empowers the Assessing Officer to serve a notice on the assessee under that section if he considers it necessary or expedient to ensure that the assessee—

- has not understated the income, or
- has not computed excessive loss, or
- has not under-paid the tax in any manner.

Such notice can require the assessee, on a date to be specified therein, either—

- to attend the office of the Assessing Officer or
- to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return.

Period of limitation for service of notice under new section 143(2).—The proviso to the newly substituted (w.e.f. 1-4-1989) section 143(2) provides that a notice under section 143(2) can be served on the assessee only during the financial year in which the return is filed or within six months from the date of filing the return, whichever is later.

Assessment after hearing evidence, etc.—new section 143(3).—The newly substituted (w.e.f. 1-4-1989) section 143(3) provides that after hearing such evidence as the assessee may produce in response to notice under section 143(2) and such other evidence as the Assessing Officer may require on specified points and after taking into account all relevant material which the Assessing Officer has gathered, he has to pass an assessment order in writing determining the total income or loss of the assessee and the sum payable by him on the basis of such assessment order.

Page 2840: section 144:

Amendment of section 144.—By section 49 of the DTL(A) Act, 1987, section 144 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in clause (a) for the words, brackets and figures “by any notice given under sub-section (2) of section 139”, the words, brackets and figures “under sub-section (1) of section 139” have been substituted;

(b) for the words “shall make the assessment”, the words “shall, after giving the assessee an opportunity of being heard, make the assessment” have been substituted;

- (c) the words "or refundable to the assessee" have been omitted;
- (d) the following provisos have been added at the end, namely:—

"Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section."'.

ANNOTATIONS

Amendment of section 144.—The amendment of clause (a) of section 144 is consequential to the omission of section 139(2) and substitution of a new section 139(1). The amended section 144(a) empowers the Assessing Officer to make a best judgment assessment on assessee's failure to file a return of income under section 139(1).

Another amendment of section 144 provides that a best judgment assessment can be made only after giving the assessee an opportunity of being heard.

As a result of the omission of the words "or refundable to the assessee", it is not possible to grant a refund to the assessee in case of a best judgment assessment.

The newly inserted first proviso to section 144 provides that such opportunity is to be given by the Assessing Officer by serving a notice upon the assessee calling him to show cause why the assessment should not be completed to the best of his judgment.

The newly inserted second proviso to section 144 dispenses with the necessity of giving such opportunity in a case where a notice under section 142(1) has already been issued.

All these amendments to section 144 are to come into force from 1-4-1989

Page 2853: section 144A:

Amendment of section 144A.—By section 50 of the DTL(A) Act, 1987, section 144A(2) has been omitted, w.e.f. 1-4-1989. This is another instance of gross negligence on the part of the draftsman as section 144A(2) has been omitted by section 126(17)(b), w.e.f. 1-4-1989.

Page 2853: section 144A:

Amendment of section 144A.—By section 126(17) of the DTL(A) Act, 1987, section 144A has been amended, w.e.f. 1-4-1989, as under:—

- '(a) in sub-section (1), the brackets and figure "(1)" have been omitted;
- (b) sub-section (2) has been omitted.'

These amendments are of consequential nature

Pages 2854-2855: section 144B:

Omission of section 144B.—By section 51 of the DTL(A) Act, 1987, section 144B, relating to reference to Inspecting Assistant Commissioner in certain cases, has been omitted, w.e.f. 1-4-1989, as the same has become inapplicable, w.e.f. 1-10-1984.

Page 2860: section 145:

Amendment of section 145.—By section 52 of the DTL(A) Act, 1987, after the proviso to section 145(1), the following second proviso thereto has been inserted, w.e.f. 1-4-1989, namely:—

“Provided further that where no method of accounting is regularly employed by the assessee, any income by way of interest on securities shall be chargeable to tax as the income of the previous year in which such interest is due to the assessee.”.

ANNOTATIONS

Second proviso inserted in section 145(1).—The newly inserted (w.e.f. 1-4-1989) second proviso to section 145(1) provides that any income by way of interest on securities is to be charged to tax, for and from assessment year 1989-90, on accrual basis in a case where no method of accounting has been regularly employed by the assessee.

Page 2920: section 146:

Omission of section 146.—By section 53 of the DTL(A) Act, 1987, section 146, relating to reopening of a best judgment assessment at the instance of the assessee, has been omitted, w.e.f. 1-4-1989, as the same has ceased to be in force in respect of best judgment assessment orders passed on or after 1st October, 1984.

Pages 2929-2930: section 147:

Substitution of new section for section 147.—By section 54 of the DTL(A) Act, 1987, the following section 147 has been substituted, w.e.f. 1-4-1989, namely:—

“147. **Income escaping assessment.**—If the Assessing Officer, for reasons to be recorded by him in writing, is of the opinion that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in

this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

- (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;
- (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- (c) where an assessment has been made, but—
 - (i) income chargeable to tax has been underassessed; or
 - (ii) such income has been assessed at too low a rate; or
 - (iii) such income has been made the subject of excessive relief under this Act; or
 - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.”.

ANNOTATIONS

Scope of income escaping assessment widened.—The existing section 147(a) empowers the Income-tax Officer to assess or re-assess the income chargeable to tax which has escaped assessment, if he has reason to believe that such escapement has occurred on account of either assessee's omission or failure to file a return of income or failure to disclose fully and truly

all material facts necessary for his assessment for that year. Section 147(b) empowers the Income-tax Officer to reopen an assessment, notwithstanding the fact that there is no omission or failure, as mentioned in section 147(a), on the part of the assessee, if he has, in consequence of information in his possession, reason to believe that income chargeable to tax has escaped assessment.

Under the newly substituted (w.e.f. 1-4-1989) section 147, separate provisions contained in the existing clauses (a) and (b) of section 147 have been simplified and merged into a single provision enabling the Assessing Officer to assess or re-assess income which has escaped assessment for any assessment year, after recording reasons for doing so. The existing requirements of having "reason to believe" or "information in possession", have been dispensed with. It is further provided in the new section 147 that once an assessment is reopened, any other income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of the proceeding under this section, can also be included in the assessment.

The proviso to new section 147 provides that if an assessment has been made for the relevant assessment year under section 143(3) or this section, no action is to be taken under this section after the expiry of four years from the end of the relevant assessment year, unless the income has escaped assessment due to the failure on the part of the assessee to file a return under section 139 or 142(1) or 148 or to disclose fully and truly all material facts necessary for his assessment.

Explanation 1 to new section 147, which clarifies the meaning of the term "disclosure", is the same as *Explanation 2* to the existing section 147.

Explanation 2 to new section 147 clarifies that the following are also to be deemed to be cases of income escaping assessment :—

- (i) where no return of income has been furnished by an assessee, although his total income is above the taxable limit;
- (ii) where a return of income has been furnished but no assessment has been made, and the assessee is found to have understated his income or claimed excessive loss, deduction, etc., in the return;
- (iii) where an assessment has been made, but income chargeable to tax has been underassessed or assessed at too low a rate or any excessive loss or relief or depreciation allowance or any other allowance under the Act has been allowed.

Page 3052: section 148:

Substitution of new section for section 148.—By section 54 of the DTL(A) Act, 1987, the following section 148 has been substituted, w.e.f. 1-4-1989, namely:—

"148. Issue of notice where income has escaped assessment.—Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139."

ANNOTATIONS

The existing provisions of section 148(1) provide that a notice issued under section 148 is to be treated tantamount to a notice issued under section 139(2). The existing provisions of section 148 also provide that before issuing a notice under section 148, the Income-tax Officer has to record his reasons for doing so.

In the newly substituted (w.e.f. 1-4-1989) section 148, two major changes have been effected, namely,—(1) reference to section 139(2) has been removed consequent upon the omission of section 139(2); (2) the requirement of recording reasons does not form part of new section 148 as such requirement has been incorporated in new section 147 itself. The new section 148, therefore, provides that before making the assessment, reassessment or recomputation under section 147, the Assessing Officer has to serve on the assessee a notice requiring him to furnish the return of income within such period, not being less than 30 days, as may be specified in the notice.

Pages 3052-3053: section 149:

Substitution of section 149(1).—By section 55 of the DTL(A) Act, 1987, the following section 149(1) has been substituted, w.e.f. 1-4-1989, namely:—

"(1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) in a case where an assessment under sub-section (3) of section 143 or section 147 has been made for such assessment year,—

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year

- unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;
- (iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to more than rupees one lakh or more for that year;
- (b) in any other case,—
- (i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);
 - (ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year;
 - (iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section.”.

ANNOTATIONS

Section 149(1) substituted.—The existing provisions of section 149(1) lay down time limits depending upon whether the case falls under clause (a) or clause (b) of the existing section 147. Thus, no notice for reopening an assessment under section 147 can be issued in a case falling under clause (b) after four years and in a case falling under clause (a) after eight years from the end of the relevant assessment year. In a case falling under clause (a), where the income which has escaped assessment amounts to Rs. 50,000 or more in that year, the case can be reopened up to 16 years.

The existing provisions of section 149(1) have substantially been changed in view of the new procedure of assessment. Under the substituted section 149(1), the time limits have been made to depend upon whether a case has been subject to scrutiny [by way of an assessment under section 143(3) or section 147] or not and also the amount of income which has

escaped assessment. The new provisions in this respect are given hereunder in the form of a chart:

| <i>A notice under section 148 can be issued</i> | | | |
|---|---|--|---|
| | up to four years from the end of the relevant assessment year | beyond four years but up to seven years from the end of the relevant assessment year | beyond seven years but up to ten years from the end of the relevant assessment year |
| in cases subjected to scrutiny by way of assessment under section 143(3) or 147 | if the escaped income is less than Rs. 50,000 | if the escaped income is Rs. 50,000 or more, but less than Rs. 1 lakh | if the escaped income is Rs. 1,00,000 or more |
| in other cases | if the escaped income is less than Rs. 25,000 | if the escaped income is Rs. 25,000 or more, but less than Rs. 50,000 | if the escaped income is Rs. 50,000 or more. |

To put it differently (with specific dates):

| A notice under section 148, for the assessment year 1989-90, can be issued upto | in a case where the assessment for that assessment year has been completed under section 143(3) or section 147 | in any other case |
|---|--|---|
| 31-3-1994 | if the escaped income is less than Rs. 50,000 | if the escaped income is less than Rs. 25,000 |
| 31-3-1997 | if the escaped income is Rs. 50,000 or more, but less than Rs. 1 lakh | if the escaped income is Rs. 25,000 or more, but less than Rs. 50,000 |
| 31-3-2000 | if the escaped income is Rs. 1 lakh or more | if the escaped income is Rs. 50,000 or more. |

An *Explanation* below the new section 149(1) clarifies that for the purposes of this sub-section 'income escaping assessment' shall have the same meaning as in *Explanation 2* to section 147.

Page 3053: section 150:

Amendment of section 150.—By section 56 of the DTL(A) Act, 1987, in section 150(1), the words "or by a Court in any proceeding under any other law" have been added at the end, w.e.f. 1-4-1989.

ANNOTATIONS

Ambit of section 150(1) enlarged.—As a result of the amendment made in section 150(1), the Assessing Officer has also been empowered,

w.e.f. 1-4-1989, to issue a notice under section 148 at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by a Court in any proceeding under any other law.

Page 3053: section 151:

Substitution of new section for section 151.—By section 57 of the DTL (A) Act, 1987, the following section 151 has been substituted, w.e.f. 1-4-1989, namely:—

“151. Sanction for issue of notice.—(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 except by an Assessing Officer of the rank of Assistant Commissioner or Deputy Commissioner:

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Deputy Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Deputy Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.”.

ANNOTATIONS

Issuing, as also sanctioning, authorities specified.—Under the existing provisions of section 151, if notice under section 148 is to be issued after the expiry of four years from the end of the relevant assessment year, sanction of the Commissioner is necessary. If the notice under section 148 is to be issued after the expiry of 8 years from the end of the relevant assessment year, sanction of the Board is necessary.

Under the newly substituted (w.e.f. 1-4-1989) section 151, the issuing or sanctioning authorities have been made to depend upon whether the case has been subject to scrutiny by way of assessment under section 143(3) or section 147 or not.

The new section 151(1) provides that where an assessment under section 143(3) or section 147 has been made for an assessment year, a notice under section 148 can be issued for that year only by an Assessing Officer of the rank of Assistant Commissioner or Deputy Commissioner.

The proviso to new section 151(1) provides that after the expiry of 4 years from the end of the relevant assessment year, a notice under section 148 can be issued only with the prior approval of the Chief Commissioner or the Commissioner.

The new section 151(2) provides that in a case other than a case falling under section 151(1), a notice under section 148 can be issued after the expiry of 4 years from the end of the relevant assessment year only by a Deputy Commissioner or with the approval of the Deputy Commissioner.

Page 3085: section 152:

Amendment of section 152.—By section 58 of the DTL(A) Act, 1987, in section 152(2), for the words, brackets, letter and figures “in circumstances falling under clause (b) of section 147”, the words and figures “under section 147” have been substituted, w.e.f. 1-4-1989. This amendment is of a consequential nature pursuant to the merger of the existing clauses (a) and (b) of section 147 in the newly substituted section 147.

Pages 3087-3089: section 153:

Amendment of section 153.—By section 59 of the DTL(A) Act, 1987, section 153 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) for sub-section (1), the following sub-section (1) has been substituted, namely:—

“(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of two years from the end of the assessment year in which the income was first assessable.”;

(b) for sub-section (2), the following sub-section (2) has been substituted, namely:—

“(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of two years from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 was served on or before the 31st day of March, 1987, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 1990.”;

(c) clause (iv) of *Explanation 1* has been omitted.’.

ANNOTATIONS

Same time limit for completion of original assessment retained in new section 153(1).—The time limit for completion of an assessment under section 143 or 144, as per the newly substituted (w.e.f. 1-4-1989) section

153(1), is two years from the end of the assessment year in which the income was first assessable. On a comparison of the new section 153(1) with the existing section 153(1), it may be seen that new section 153(1) re-enacts the provisions of the existing section 153(1)(a)(iii) only. The other clauses and sub-clauses of the existing section 153(1) have been deleted for the reasons given below:—

(1) Provisions of sub-clauses (i) and (ii) of clause (a) relating to assessment years 1967-68 and 1968-69, which were transitory provisions at the time of their introduction by the Finance Act, 1968, have become redundant.

(2) Provisions of clause (b), which provide eight year time limit for completion of assessments involving concealment of income, are impracticable and have actually been used very rarely.

(3) Provisions of clause (c) having become redundant in view of the curtailed time of one year from the end of the relevant assessment year allowed for filing returns of income under new sub-sections (4) and (5) of section 139.

(4) Provisions of clause (d) having become redundant in view of the new procedure of assessment.

New time limit prescribed for completion of assessment, etc., under section 147.—The newly substituted (w.e.f. 1-4-1989) section 153(2) provides for a uniform time limit, for completion of assessment, reassessment or recomputation under section 147, of two years from the end of the financial year in which the notice under section 148 was served. The different time limits, as provided for in the existing section 153(2), depending upon whether the case falls under clause (a) or clause (b) of the existing section 147 have been merged into a uniform time limit in the new section 153(2).

Transitional provision.—The proviso to new section 153(2) makes an exception in cases where notice under section 148 has been served on or before 31-3-1987. In such cases the assessment, reassessment or recomputation can be made by 31-3-1990. This is by way of a transitory provision to tide over the difficulties during the transitional period on switching over from the present four year limit to the new two year limit.

Omission of clause (iv) of Explanation 1.—Clause (iv) of *Explanation 1* to section 153, which deals with time limit in a case referred to the Inspecting Assistant Commissioner under section 144B, has been omitted consequent upon the omission of that section 144B itself, w.e.f. 1-4-1989.

Pages 3114-3115: section 154:

Substitution of section 154 (1).—By section 60 of the DTL(A) Act, 1987, the following section 154(1) has been substituted, w.e.f. 1-4-1989, namely:—

“(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,—

- (a) amend any order passed by it under the provisions of this Act;
- (b) amend any intimation sent by it under sub-section (1) of section 143, or enhance or reduce the amount of refund granted by it under that sub-section.”.

ANNOTATIONS

Scope of section 154(1) widened.—Under the newly substituted section 154(1), an income-tax authority has also been empowered (w.e.f. 1-4-1989) to amend any intimation sent by it under section 143(1) or to enhance or to reduce the amount of refund granted by it under section 143(1).

Pages 3167-3177: section 155:

Amendment of section 155.—By section 61 of the DTL(A) Act, 1987, section 155 has been amended, save as otherwise provided, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1), in the opening paragraph, for the words “Where in respect of any completed assessment of a partner in a firm”, the words, figures and letters “Where, in respect of any completed assessment of a partner in a firm for the assessment year commencing on the 1st day of April, 1989, or any earlier assessment year,” have been substituted;

(b) sub-sections (3) and (13) have been omitted;

(c) sub-sections (5B), (6), (7A), (8), (8A), (9), (9A), (10), (10B) and (10C) have been omitted with effect from the 1st day of April, 1992.’

ANNOTATIONS

Provisions of section 155(1) withdrawn for and from assessment year 1989-90.—As a result of the amendment of section 155(1), dealing with rectification of partner's share income from a firm, the applicability of the provisions of that section 155(1) have been restrained upto and including assessment year 1988-89.

Omissions effective from 1-4-1989.—Section 155(3), relating to re-computation of income consequent to tax payable by way of Excess Profits Tax or Business Profits Tax (which ceased to be levied long back) has been omitted as the same has become redundant.

Section 155(13), dealing with amendment of an assessment order by allowing the provision made for gratuity which was deposited in an approved gratuity fund subsequent to the passing of an assessment order, has been omitted as the same has become redundant after 31st March, 1981.

Omissions effective from 1-4-1992.—Section 155(5B), which deals with withdrawal of deduction for expenditure on scientific research originally allowed under section 35(2B), has been omitted as the same has become redundant in view of the omission of section 35.

Section 155(6), which deals with allowability of a bad debt in an year earlier than the year of write off, has been omitted as the same has become redundant in view of the allowance of bad debt in the year of write off itself.

Sections 155(7A), (8A), (9A), (10)(b) and (10B) have been omitted as the same have become redundant in view of the amendments to sections 54, 54B, 54D and 54E made by the Finance Act, 1987.

Sections 155(8), (9), (10)(a) and (10C) have been omitted as the same have become redundant in view of the new scheme of investment of capital gains introduced by the Finance Act, 1987.

Page 3214: section 158:

Amendment of section 158.—By section 62 of the DTL(A) Act, 1987, in section 158, for the words “Whenever a registered firm is assessed”, the words, figures and letters “Whenever, in respect of the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, a registered firm is assessed” have been substituted, w.e.f. 1-4-1989.

ANNOTATIONS

Section 158 made applicable upto assessment year 1988-89.—As a result of the amendment of section 158, its applicability has been restrained upto and including assessment year 1988-89.

This is consequent upon the introduction of a new scheme of taxation of firms for and from assessment year 1989-90.

Page 3216: new section 158B:

Insertion of new section 158B.—By section 63 of the DTL(A) Act, 1987, the following Chapter XIV-B, containing section 158B, has been inserted, w.e.f. 1-4-1989, namely:—

"CHAPTER XIV-B

CHARGE OF ADDITIONAL INCOME-TAX IN CERTAIN CASES

158B. Additional income-tax.—(1) Where, in the case of any person, the total income determined in the regular assessment for any assessment year (hereafter in this section referred to as assessed income) exceeds the total income declared in the return of income furnished by such person for that assessment year (hereafter in this section referred to as returned income) by any amount, the Assessing Officer shall make an order in writing that such person shall, apart from the sum determined as payable by him on the basis of the assessment under section 143 or section 144, be liable to pay, by way of additional income-tax, in respect of the said assessment year, a sum calculated on such excess amount at the rate of thirty per cent.

(2) For the purposes of sub-section (1),—

- (a) where such person has furnished two or more returns of income for the same assessment year, the total income declared in the return furnished last before the service of a notice under sub-section (2) of section 143 on such person shall be treated as the returned income;
- (b) where such person fails to furnish the return of income in respect of any assessment year and the assessment for that year is made under section 144, the returned income shall be taken to be the total income on which tax, by way of advance tax, deduction of tax at source and otherwise, has been paid, and where no such tax has been paid, the returned income shall be taken to be *nil*;
- (c) where such person fails to furnish a return of income for any assessment year under section 139, but furnishes such return after he is served with a notice under section 148, the returned income shall be taken to be the total income on which tax, by way of advance tax, deduction of tax at source and otherwise, has been paid, and where no such tax has been paid, the returned income shall be taken to be *nil*;
- (d) where such person has furnished a return of loss under sub-section (3) of section 139 for any assessment year, the additional income-tax under sub-section (1) shall be calculated at the rate specified in that sub-section on the sum or, as the case may be, the aggregate of the sums by which the loss is reduced to a lower amount or, as the case may be, converted into a positive amount of income in the regular assessment.

(3) Where, as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of settlement passed under sub-section (4) of section 245D, the amount on which the additional income-tax is payable under sub-section (1) has been increased or reduced, as the case may be, the additional income-tax shall be increased or reduced accordingly, and,—

- (i) in a case where the additional income-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and all the provisions of this Act shall apply accordingly;
- (ii) in a case where the additional income-tax is reduced, the excess amount paid, if any, shall be refunded.

(4) The Chief Commissioner or Commissioner may, in his discretion, whether on his own motion or otherwise, waive or reduce the amount of additional income-tax payable under sub-section (1) by any person, if he is satisfied that the whole or, as the case may be, any part of the excess amount referred to in that sub-section is attributable to any amount added or disallowed in computing the assessed income or loss as a result of the rejection of any explanation (by way of interpretation of any provision of this Act or otherwise) offered by such person, if such explanation is *bona fide* and all the facts relating to the same and material to the computation of the assessed income or loss have been disclosed by him:

Provided that—

- (i) where an appeal before the Deputy Commissioner (Appeals) or the Commissioner (Appeals) has also been filed by the assessee against the order of assessment, the petition for waiver or reduction of the amount of additional income-tax can be filed by the assessee only after the decision on such appeal;
- (ii) the petition for waiver or reduction of the amount of additional income-tax shall be accompanied by a fee of one hundred rupees.

(5) Where, in the course of a search under section 132, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income,—

- (a) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein; or

- (b) for any previous year which is to end on or after the date of the search,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, such income shall not, for the purposes of liability to the additional income-tax under this section, be treated as forming part of the returned income, unless,—

- (i) such income is, or the transactions resulting in such income are, recorded,—

(A) in a case falling under clause (a), before the date of the search; and

(B) in a case falling under clause (b), on or before the date of the search,

in the books of account, if any, maintained by him for any source of income or such income is otherwise disclosed to the Chief Commissioner or Commissioner before the said date; or

- (ii) the assessee, in the course of the search, makes a statement under sub-section (4) of section 132 that the money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of the time specified in sub-section (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax together with interest, if any, in respect of such income.

(6) The additional income-tax payable under this section shall not be included—

- (i) in the amount of the tax payable on the total income as determined on regular assessment, for the purposes of sub-section (1) of section 234A; or

- (ii) in the amount of the assessed tax, for the purposes of sub-section (1) of section 234B.”.

ANNOTATIONS

Charge of additional income-tax in certain cases.—The new section 158B(1) provides that on completion of a regular assessment under section 143 or 144, apart from the sum determined as payable on the basis of such assessment, an additional income-tax at the rate of 30 per cent. of the difference between the assessed income and the returned income is to be levied by the Assessing Officer.

Returned income defined in certain cases.—The new section 158B(2), in its clauses (a) to (c), clarifies as to what is to constitute returned income for the purposes of levy of additional income-tax in different circumstances. The provisions in brief are:—

- (i) Clause (a) provides that where there are two or more returns of income for the same assessment year, the income shown in the return filed last before the service of a notice of hearing under section 143(2), is to be treated as the returned income.
- (ii) Clause (b) provides that where a best judgment assessment is completed under section 144 for assessee's failure to file a return of income, the returned income is to be taken at 'nil' or such higher total income in respect of which tax by way of advance tax, deduction of tax at source and otherwise has been paid.
- (iii) Clause (c) makes similar provision, as in clause (b), in cases where the return of income has been filed under section 148.

Levy of additional income-tax in case of a loss return.—Section 158B(2)(d) clarifies as to how the additional income-tax is to be levied in case of a loss return. That clause provides that where the returned income is a loss, the additional income-tax is to be levied on the additions made which have the effect of reducing the loss or converting it into income.

Consequential increase or reduction in additional income-tax.—Section 158B(3) provides that where as a result of an order under section 147, 154, 155, 250, 254, 260, 262, 263 or 264, or an order of settlement passed under section 245D(4), the amount on which the additional income-tax is payable is increased or reduced, the additional income-tax is also to be increased or reduced accordingly.

Waiver or reduction of additional income-tax.—Section 158B(4) gives discretion to the Chief Commissioner or the Commissioner, whether on his own motion or otherwise, to waive or reduce the amount of additional income-tax payable if he is satisfied that the difference between the returned income and the assessed income is due to *bona fide* difference of opinion and all the facts relating to and material to the computation of the assessed income or loss had been disclosed by the assessee.

A proviso to section 158B(4) provides that—

- (i) where an appeal against the assessment order has been filed by the assessee before the Deputy Commissioner (Appeals) or Commissioner (Appeals), the petition for waiver or reduction of additional income-tax can be filed only after the decision on such appeal;
- (ii) the petition for waiver or reduction of additional income-tax is to be accompanied by a fee of Rs. 100.

Special provisions for search and seizure cases.—Section 158B(5) provides that where in the course of a search under section 132, the assessee

is found to be the owner of any money, bullion, jewellery or other valuable article or thing and the assessee claims that the assets referred to above have been acquired by him by utilising his income—

- (a) for any previous year which has ended before the date of search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein, or
- (b) for any previous year which is to end on or after the date of the search,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, such income is not to be treated as forming part of his returned income for the purposes of liability of the additional income-tax.

The aforesaid income is, however, to be treated as forming part of the returned income in the following situations:—

- (i) If such income is, or the transactions resulting in such income are, recorded,—
 - (A) in a case falling under clause (a), before the date of search, and
 - (B) in a case falling under clause (b), on or before the date of search,
 in the books or accounts maintained by the assessee, or such income is otherwise disclosed to the Chief Commissioner or Commissioner before the said date.
- (ii) The assessee, in the course of search, makes a statement under section 132(4) that the assets found have been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of the time specified in section 139(1) and explains the source of such income and pays the tax together with interest, if any, in respect of such income.

Interest provisions not to apply to additional income-tax.—Section 158B(6) clarifies that provisions regarding levy of interest under section 234A(1) and under section 234B(1) for defaults in furnishing the return of income or in payment of advance tax, are not to apply to the additional income-tax.

Pages 3238-3242: section 164:

Amendment of section 164.—By section 64 of the DTL(A) Act, 1987, section 164 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1),—

(i) in the opening portion, for the brackets, figures and words “(1) Subject to the provisions of sub-sections (2) and (3), where”, the word “Where” has been substituted;

- (ii) in the first proviso, for the words "association of persons", in the two places where they occur, the word "individual" has been substituted;
 (b) sub-sections (2) and (3), and *Explanation* 2 have been omitted.'

ANNOTATIONS

Section 164(1) amended.—The amendments made in section 164(1) are of consequential nature.

Omissions.—The provisions of sub-sections (2) and (3) of section 164 have been omitted as these are to be covered by the provisions of the new section 80F.

The omission of *Explanation* 2 to section 164, which gives a definition of the expression "maximum marginal rate", is consequent upon the shifting of that definition in a slightly modified form to the newly inserted section 2(29C).

Pages 3242-3243: section 164A:

Amendment of section 164A.—By section 65 of the DTL(A) Act, 1987, in section 164A, in the *Explanation*, clause (i) has been omitted, w.e.f. 1-4-1989. This omission is consequential to the shifting of the definition of the expression "maximum marginal rate" to the newly inserted section 2(29C).

Pages 3316-3317: sections 167A and 167B:

Substitution of new sections for section 167A.—By section 66 of the DTL(A) Act, 1987, in Chapter XV, for the sub-heading "*DD.—Association of persons—special cases*", and section 167A below it, the following has been substituted, w.e.f. 1-4-1989, namely:—

"DD.—Firms, association of persons and body of individuals

167A. Charge of tax in the case of a firm.—In the case of a firm which is assessable as a firm, tax shall be charged on its total income at the maximum marginal rate.

167B. Charge of tax where shares of members in association of persons or body of individuals unknown, etc.—(1) Where the individual shares of the members of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India] in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)], the total income of any member thereof for the previous year

(excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of an individual under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate:

Provided that, where the total income of any member of such association or body (whether or not it exceeds the maximum amount aforesaid) is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.”.

ANNOTATIONS

New scheme of taxation of firms—new section 167A.—Under the existing provisions regarding taxation of firms, operative upto and including assessment year 1988-89, the Act makes a distinction between a registered firm and an unregistered firm. There is an elaborate procedure to grant registration to the firms or to cancel the registration under certain circumstances [sections 184 to 186]. A registered firm is taxed at rates lower than the rates applicable to individuals and in addition, shares of partners in the income of the firm are again included in their total incomes and taxed in their hands [section 182]. An unregistered firm is taxed on its total income at the rates applicable to individuals. In addition, shares of partners in the income of the firm are included in their total incomes for rate purposes only [sections 183 and 86(iii)].

Under the new scheme of taxation of firms, operative for and from assessment year 1989-90, the existing procedure of granting registration to the firms has been dispensed with. However, it has been made obligatory for the firm to file a certified copy of the instrument of partnership along with the first return of income. Thus, the distinction between a registered firm and an unregistered firm has been removed and all firms are to be taxed at the ‘maximum marginal rate’, as per the provisions of the new section 167A. However, payments by way of salary, etc., made to whole-time working partners and interest to partners [which are not to be allowed, upto assessment year 1988-89, as a deduction under the provisions of the existing section 40(b)] are to be treated as allowable deduction subject to certain ceilings, for and from assessment year 1989-90, under the newly substituted section 40(b).

With the taxation of the firms directly at the maximum marginal rate, the shares of the partners in the income of the firm are not to be included in their total income [new section 10(2A)]. Also, separate rate schedules provided for taxation of firms in Sub-Paragraphs I and II of Paragraph C of Parts I and III of the First Schedule to the Finance Act are to be omitted in due course.

New scheme of taxation of association of persons or body of individuals—new section 167B.—Under the existing provisions, operative upto and including assessment year 1988-89, an association of persons or a body of individuals is taxed at the rates applicable to individuals. However, if the shares of the members of an association of persons are indeterminate or unknown, the association of persons is taxed at the 'maximum marginal rate' [section 167A].

The provisions of the newly substituted section 167B, along with the provisions of the newly substituted section 86 and the newly introduced section 40(ba), introduce a new scheme of taxation of an association of persons or a body of individuals for and from assessment year 1989-90.

The new section 167B(1) provides that where the individual shares of the members of an association of persons or a body of individuals in the whole or any part of the income of such association or body are indeterminate or unknown, the tax is to be charged at the 'maximum marginal rate' on the total income of the association or body. In effect, this is an re-enactment of the provisions of the main portion of the existing section 167A.

The new section 167B(2) provides that where in the case of an association of persons or a body of individuals, the total income of any member, other than share from such association or body, exceeds the maximum amount which is not chargeable to tax in the case of an individual, the association or body is to be charged at the 'maximum marginal rate'. Thus, the provisions of new section 167B(2) are applicable irrespective of the fact whether shares of the members of such association or body in the whole or any part of the income of such association or body are indeterminate/unknown or are determinate/known.

The proviso to new section 167B(2) provides that if any member of such association or body is chargeable to tax at a rate higher than the 'maximum marginal rate', tax is to be charged on the total income of the association or body at such higher rate.

The *Explanation* at the end of the new section 167B lays down as to when the shares of members in an association of persons or body of individuals are to be deemed to be indeterminate or unknown, and is the same as the *Explanation* to the existing section 167A.

It may be noted that in the remaining cases of association of persons and body of individuals, that is, where none of the members has other income above the taxable limit and the shares of the members are determinate, tax is to continue to be charged at the rates applicable to the individuals

together with such surcharge on tax as may be levied, in the relevant Finance Act.

Pages 3416-3417: section 174:

Amendment of section 174.—By section 126(18) of the DTL(A) Act, 1987, section 174 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (4),—

(i) for the words, brackets and figures “as a return under sub-section (2) of section 139”, the words, brackets and figures “as a return under clause (i) of sub-section (1) of section 142” have been substituted;

(ii) for the words, brackets and figures “a notice issued under sub-section (2) of section 139”, the words, brackets and figures “a notice issued under clause (i) of sub-section (1) of section 142” have been substituted;

(b) in sub-section (6), for the words, brackets and figures “sub-section (2) of section 139 or sub-section (1) of”, wherever they occur, the words, brackets and figures “clause (i) of sub-section (1) of section 142 or” have been substituted.’

The above amendments are consequential to the amendments, by that Act, of sections 139 and 142.

Pages 3420-3421: section 176:

Amendment of section 176.—By section 126(19) of the DTL(A) Act, 1987, section 176 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (5), for the words, brackets and figures “under sub-section (2) of section 139”, wherever they occur, the words, brackets and figures “under clause (i) of sub-section (1) of section 142” have been substituted;

(b) in sub-section (7), for the words, brackets and figures “sub-section (2) of section 139 or sub-section (1) of”, wherever they occur, the words, brackets and figures “clause (i) of sub-section (1) of section 142 or” have been substituted.’

The above amendments are consequential to the amendments, by that Act, of sections 139 and 142.

Pages 3458-3459: sections 182 and 183:

Omission of sections 182 and 183.—By section 67 of the DTL(A) Act, 1987, in Chapter XVI, sub-heading “A.—*Assessment of firms*” and sections 182 and 183 have been omitted, w.e.f. 1-4-1989.

ANNOTATIONS

Sections 182 and 183 omitted.—The following sections 182 and 183 have been omitted consequent upon the introduction of a new scheme of taxation of firms for and from assessment year 1989-90:—

- (1) section 182, which deals with assessment of registered firms, inclusion of partners' shares in the income of the firm in their own assessments and recovery from the registered firm of tax relating to a non-resident or resident partner in respect of his share in the firm;
- (2) section 183, which deals with assessment of unregistered firms.

Pages 3479-3482 and 3613-3614: sections 184, 185 and 186:

Substitution of new sections 184 and 185 for sections 184, 185 and 186.
—By section 68 of the DTL(A) Act, 1987, for the sub-heading "*B.—Registration of firms*" before section 184, and for sections 184, 185 and 186, the following sections 184 and 185 have been substituted, w.e.f. 1-4-1989, namely:—

"184. Assessment as a firm.—(1) A firm shall be assessed as a firm for the purposes of this Act, if—

- (i) the partnership is evidenced by an instrument; and
- (ii) the individual shares of the partner are specified in that instrument.

(2) A certified copy of the instrument of partnership referred to in sub-section (1) shall accompany the return of income of the firm of the previous year for the assessment year in respect of which assessment as a firm is first sought.

Explanation.—For the purposes of this sub-section, the copy of the instrument of partnership shall be certified in writing by all the partners (not being minors) or, where the return is made after the dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(3) The return of income referred to in sub-section (2) shall be signed and verified by all the partners, not being minors.

(4) Where a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought.

(5) Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year and all the provisions of this section shall apply accordingly.

(6) Notwithstanding anything contained in the foregoing provisions of this section, where, in respect of any assessment year, there is, on the part of a firm any such failure as is mentioned in section 144, the firm shall not be assessed as such for the said assessment year and, thereupon, the firm shall be assessed in the same manner as an asso-

ciation of persons, and all the provisions of this Act shall apply accordingly.

185. **Assessment when section 184 not complied with.**—Where a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be assessed for that assessment year in the same manner as an association of persons, and all the provisions of this Act shall apply accordingly.”

ANNOTATIONS

Provisions about registration of firms, etc., withdrawn for and from assessment year 1989-90.—As a result of the substitution of the existing—

- section 184 dealing with application for registration;
- section 185 dealing with procedure for registration; and
- section 186 dealing with cancellation of registration,

by sections 184 and 185, w.e.f. 1-4-1989, the provisions about registration of a firm, etc., have been withdrawn for and from assessment year 1989-90.

Assessment of a firm as such.—The new section 184 deals with the circumstances under which a firm shall be assessed as such for and from assessment year 1989-90. Sections 184(1) to 184(3) provide that the partnership should be evidenced by an instrument of partnership wherein the individual shares of the partners are specified and a copy of the same, certified in writing by all the partners, should be filed along with the first return of the firm which should also be signed by all the partners. Sections 184(4) and 184(5) provide that where a firm is assessed as such in any assessment year, it shall continue to be assessed as such for subsequent years unless a change in the constitution of the firm takes place, in which case the firm has to furnish a certified copy of the revised instrument of partnership along with the return of income of the assessment year in which the change in the constitution has taken place. Section 184(6) provides that where, in the case of a firm, a best judgment assessment is made under section 144, the Assessing Officer has not to assess the firm as such and thereupon it is to be assessed as an association of persons.

Assessment of a firm when as an association of persons.—The new section 185 provides that if a firm does not comply with the provisions of section 184 for any assessment year, it is to be assessed as an association of persons for that assessment year.

Page 5620: section 187:

Amendment of section 187.—By section 69 of the BTL(A) Act, 1987, the proviso to section 187(1) has been omitted, w.e.f. 1-4-1989.

ANNOTATIONS

Proviso to section 187(1) omitted.—The existing proviso to section 187(1) provides, in the case of change in the constitution of the firm, for apportionment of the income of the firm amongst the partners and for recovery of tax assessed upon a partner from the new firm, if it cannot be recovered from the partner. These provisions have become unnecessary in view of the introduction of a new scheme of taxation of firms and also in view of the fact that a partner's share in the income of the firm is not to be included in his total income. In that view of the matter, the proviso to section 187(1) has been omitted, w.e.f. 1-4-1989.

Page 3634: new section 188A:

Insertion of new section 188A.—By section 70 of the DTL(A) Act, 1987, after section 188, the following section 188A has been inserted, w.e.f. 1-4-1989, namely:—

“188A. Joint and several liability of partners for tax payable by firm.—Every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant, and all the provisions of this Act, so far as may be, shall apply to the assessment of such tax or imposition or levy of such penalty or other sum.”

ANNOTATIONS

Partners made liable jointly and severally.—The newly inserted (w.e.f. 1-4-1989) section 188A deals with joint and several liability of partners for tax payable by the firm. That new section lays down that every person who was, during the previous year, a partner of the firm, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for that year.

Page 3634: section 189:

Amendment of section 189.—By section 71 of the DTL(A) Act, 1987, the *Explanation* below section 189(3) has been omitted, w.e.f. 1-4-1989. The omission is consequent upon the omission, by that Act, of section 182.

Page 3641: new section 189A:

Insertion of new section 189A.—By section 72 of the DTL(A) Act, 1987, in Chapter XVI, after section 189, the following section 189A has been inserted, w.e.f. 1-4-1989, namely:—

"189A. Provisions applicable to past assessments of firms.—In relation to the assessment of any firm and its partners for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the provisions of this Chapter as they stood immediately before the date of commencement of the Direct Tax Laws (Amendment) Act, 1987, shall continue to apply."

ANNOTATIONS

Saving clause enacted.—The newly inserted (w.e.f. 1-4-1989) section 189A enacts a saving clause and provides that for the assessment year 1988-89 or earlier years, the provisions of Chapter XVI, as they stood immediately before the commencement of the Direct Tax Laws (Amendment) Act, 1987, shall continue to apply.

Pages 3709-3711: section 194A:

Amendment of section 194A.—By section 73 of the DTL(A) Act, 1987, section 194A(3)(iv) has been omitted, w.e.f. 1-4-1988. This omission is consequent upon the insertion of a new section 194E.

Page 3760: new section 194E:

Insertion of new section 194E.—By section 74 of the DTL(A) Act, 1987, after section 194D, the following section 194E has been inserted, w.e.f. 1-4-1989, namely:—

"194E. Interest, salary, bonus, commission or remuneration to partners.—(1) any person assessable as a firm who is responsible for paying to a partner any income by way of,—

(a) interest on capital or any other sum borrowed by it from the partner;

(b) salary, bonus, commission or remuneration, by whatever name called,

shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax on the estimated amount of the interest or, as the case may be, salary, bonus, commission or remuneration aforesaid due to the partner during the financial year at the average rate of income-tax computed on the basis of the rates in force for that financial year in which such income is credited or paid to the partner.

(2) Where, during the financial year, an assessee derives such income simultaneously from more than one firm or where he was successively a partner in more than one firm, he may furnish to the firm responsible for making the payment referred to in sub-section (1) (being one of the said firms as the assessee may, having regard

to the circumstances of his case, choose), such details of the payments referred to in sub-section (1) due or received by him from the other firm or firms, the tax deducted at source therefrom and such other particulars, in such form and verified in such manner as may be prescribed, and thereupon the firm responsible for making the payment referred to above shall take into account the details so furnished for the purposes of making the deduction under sub-section (1).

(3) Where an assessee who receives the payments referred to in sub-section (1) has, in addition, any income other than the income referred to in sub-section (1) (not being a loss under any head of income) for the same financial year, he may send to the firm responsible for making the payment referred to in sub-section (1) the particulars of such other income and of any tax deducted thereon under any other provision of this Chapter, in such form and verified in such manner as may be prescribed and thereupon the firm responsible as aforesaid shall take such other income and the tax, if any, deducted thereon also into account for the purposes of making the deduction under sub-section (1):

Provided that this sub-section shall not in any case have the effect of reducing the tax deductible from the payments referred to in sub-section (1) below the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account.

(4) The firm responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.”

ANNOTATIONS

New provision for deduction of tax at source from interest, salary, etc., paid to a partner—new section 194E.—Section 194E, newly inserted (w.e.f. 1-4-1988), provides for deduction of tax at source from interest, salary, bonus, commission or remuneration paid by a firm to any of its partners.

The provisions of new section 194E are on the lines of the provisions of section 192, which relates to deduction of tax at source from salary.

Pages 3771 and 3772: sections 196 and 196A:

Substitution of new sections for section 196.—By section 75 of the DTL(A) Act, 1987, for section 196, the following sections 196 and 196A have been substituted, w.e.f. 1-4-1988, namely:—

"196. Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations.—Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to—

- (i) the Government, or
- (ii) the Reserve Bank of India, or
- (iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or
- (iv) a Mutual Fund specified under clause (23D) of section 10, where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.

196A. Tax not to be deducted from any sums payable to unit-holders of Mutual Fund.—Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by a public sector bank or a public financial institution referred to in clause (23D) of section 10 from any sums payable to unit-holders of a Mutual Fund specified under that clause."

ANNOTATIONS

No deduction of tax from any sums payable to a specified Mutual Fund.—In effect, the newly substituted section 196, in its new clause (iv), provides that no tax is to be deducted, w.e.f. 1-4-1988, from any sums payable to a Mutual Fund specified under new section 10(23D).

No deduction from sums payable to unit-holders by a specified Mutual Fund.—The new section 196A provides that no tax is to be deducted, w.e.f. 1-4-1988, at source by a Mutual Fund specified under section 10(23D) from any sums payable to its unit-holders.

Page 3782: section 199:

Amendment of section 199.—By section 126(20) of the DTL(A) Act, 1987, in section 199, the brackets, words, figures and letter "(including a provisional assessment under section 141A), if any," have been omitted, w.e.f. 1-4-1989. This amendment is consequential to the omission, by that Act, of section 141A.

Pages 3810 and 3813-3814: sections 207 and 208:

Substitution of new sections for sections 207 and 208.—By section 76 of the DTL(A) Act, 1987, the following sections 207 and 208 have been substituted, w.e.f. 1-4-1988, namely:—

207. Liability for payment of advance tax.—Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as “current income”.

208. Conditions of liability to pay advance tax.—Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is one thousand five hundred rupees or more.

ANNOTATIONS

Advance tax made payable also in respect of capital gains and casual income.—As a result of the substitution of a new section 207, advance tax has also been made payable, w.e.f. 1-4-1988, in respect of—

- income chargeable under the head “Capital gains”; and
- income of casual nature referred to in section 2(24)(ix).

The new section 207 takes all items of income constituting total income within the fold of the liability to pay advance tax.

Uniform exemption limit for advance tax liability.—The new section 208 abolishes the various income limits applicable to different categories of persons referred to in the existing provisions of section 208 for being liable to pay advance tax and makes it obligatory, w.e.f. 1-4-1988, to pay advance tax in every case where the advance tax payable is Rs. 1,500 or more.

Pages 3816-3819: section 209:

Amendment of section 209.—By section 77 of the DTL(A) Act, 1987, section 209 has been amended, w.e.f. 1-4-1988, as under:—

‘(a) for sub-section (1), the following sub-section (1) has been substituted, namely:—

“(1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely:—

- (a) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year;

- (b) where the calculation is made by the Assessing Officer for the purpose of making an order under sub-section (3) of section 210, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income furnished by him for any subsequent previous year, whichever is higher, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;
- (c) where the calculation is made by the Assessing Officer for the purpose of making an amended order under sub-section (4) of section 210, the total income declared in the return furnished by the assessee for the later previous year, or, as the case may be, the total income in respect of which the regular assessment, referred to in that sub-section has been made, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;
- (d) the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be deductible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable.”;

(b) in sub-section (2),—

(i) in clause (a),—

(A) in the opening portion, for the words, brackets, figures and letter “where the assessee sends a statement under sub-section (1) of section 209A or where the Income-tax Officer makes an order under sub-section (1) or sub-section (3) of section 210”, the words, brackets and figures “where the Assessing Officer makes an order under sub-section (3) or sub-section (4) of section 210” have been substituted;

(B) for sub-clause (ii), the following sub-clause (ii) has been substituted, namely:—

“(ii) if the total income declared by the assessee for the later previous year referred to in sub-section (4) of section 210 forms the basis of computation of advance tax, the net agricultural income as returned by the assessee in the return of income for the assessment year relevant to such later previous year;”;

(ii) for clause (b), the following clause (b) has been substituted, namely:—

“(b) in cases where the advance tax is paid by the assessee on the basis of his estimate of his current income, under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, the net agricultural income, as estimated by him, of the period which would be the previous year for the immediately following assessment year;”;

(c) in sub-section (3),—

(i) in the opening portion, for the words and figures “under section 210”, the words, brackets and figures “under sub-section (3) or sub-section (4) of section 210” have been substituted;

(ii) in clause (b), for the words, figures and letter “on the basis of which tax has been paid by the Hindu undivided family under section 140A”, the words, figures and brackets “in respect of which a return of income is furnished by the Hindu undivided family under section 139 or in response to a notice under sub-section (1) of section 142” have been substituted.’

ANNOTATIONS

Mode of computation of advance tax altered—substituted section 209(1).

—(a) For the purposes of payment of advance tax under—

- section 210(1), on assessee’s own accord, or
- section 210(2), for varying any remaining instalment or instalments of advance tax paid under section 210(1), or
- section 210(5), for lessening the amount of advance tax demanded under section 210(3) or 210(4), or
- section 210(6), for increasing the amount of advance tax demanded under section 210(3) or 210(4) or intimated by the assessee under section 210(5),

the assessee is required, under new section 209(1)(a), w.e.f. 1-4-1988, to estimate his ‘current income’ as per section 207 and to calculate income-tax thereon at the rates in force in the relevant financial year.

(b) For the purpose of making an order under section 210(3) demanding advance tax from an old assessee, who has not paid advance tax under section 210(1), the threshold for computation of advance tax is, as per new section 209(1)(b),—

- the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment, or
- the total income returned for any subsequent previous year, whichever is higher. On such higher total income, income-tax is to be calculated at the rates in force in the relevant financial year.

(c) For the purpose of making an amended order under section 210(4) demanding higher advance tax from an old assessee, the threshold for computation of advance tax is, as per new section 209(1)(c),—

- the total income returned for the later previous year, or
- the total income as per the regular assessment for a later assessment year.

On such total income, the income-tax is to be calculated at the rates in force in the relevant financial year.

As per new section 209(1)(d), the income-tax as calculated under (a), (b) or (c) above is, in each case, to be reduced by the amount of income-tax which would, in that financial year, be deductible at source under any provision of the Act from any income which has been taken into account in arriving at the figure of 'current income'.

Section 209(2) amended.—The amendments made in section 209(2) are consequential to the amendments made in sections 209 and 210.

Section 209(3) amended.—The amendments made in section 209(3) are consequential to the substituted provisions of sub-sections (3) and (4) of new section 210.

Pages 3831-3834: section 209A:

Omission of section 209A.—By section 78 of the DTL(A) Act, 1987, section 209A, relating to computation and payment of advance tax by an assessee, has been omitted, w.e.f. 1-4-1988, as the same has become redundant in consequence of the substituted section 210(1).

Page 3842: section 210:

Substitution of new section for section 210.—By section 79 of the DTL(A) Act, 1987, the following section 210 has been substituted w.e.f. 1-4-1988, namely:—

"210. Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.—(1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.

(2) A person who pays any instalment or instalments of advance tax under sub-section (1), may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current income and the advance tax payable thereon, and make payment of the said amount in the remaining instalment or instalments accordingly.

(3) In the case of a person who has been already assessed by way of regular assessment in respect of the total income of any previous year and who has not paid any advance tax under sub-section (1), the Assessing Officer, if he is of opinion that such person is liable to pay advance tax, may, at any time during the financial year but not later than the last day of February, by order in writing, require such person to pay advance tax calculated in the manner laid down in section 209, and issue to such person a notice of demand under section 156 specifying the instalment or instalments in which such tax is to be paid.

(4) If, after the making of an order by the Assessing Officer under sub-section (3) and at any time before the 1st day of March, a return of income is furnished by the assessee under section 139 or in response to a notice under sub-section (1) of section 142, or a regular assessment of the assessee is made, in respect of a previous year later than that referred to in sub-section (3), the Assessing Officer may make an amended order and issue to such assessee a notice of demand under section 156 requiring the assessee to pay, on or before the due date or each of the due dates specified in section 211 falling after the date of the amended order, the appropriate percentage, specified in section 211, of the advance tax computed on the basis of the total income declared in such return or in respect of which the regular assessment aforesaid has been made.

(5) A person who is served with an order of the Assessing Officer under sub-section (3) or an amended order under sub-section (4) may, if in his estimation the advance tax payable on his current income would be less than the amount of the advance tax specified in such order or amended order, send an intimation in the prescribed form to the Assessing Officer to that effect and pay such advance tax as accords with his estimate, calculated in the manner laid down in section 209, at the appropriate percentage thereof specified in section 211, on or before the due date or each of the due dates specified in section 211 falling after the date of such intimation.

(6) A person who is served with an order of the Assessing Officer under sub-section (3) or amended order under sub-section (4) shall, if in his estimation the advance tax payable on his current income would exceed the amount of advance tax specified in such order or amended order or intimated by him under sub-section (5), pay on or before the due date of the last instalment specified in section 211, the appropriate part or, as the case may be, the whole of such higher amount of advance tax as accords with his estimate, calculated in the manner laid down in section 209."

ANNOTATIONS

New scheme for payment of advance tax introduced.—Under the existing provisions of section 209A and section 210 read with section 209 and section 212 of the Act, an assessee has to pay advance tax in accordance with the statement of advance tax or estimate of advance tax to be sent to the Income-tax Officer in the prescribed manner. The amended section 209 and substituted section 210 have introduced a new scheme for payment of advance tax under which an assessee is required to estimate his 'current income' and pay advance tax thereon without having to submit any estimate or statement of advance tax to the assessing authorities, except where a notice has been served on him under the new section 210(3) or 210(4).

Old and new assessee bound to pay advance tax.—Under new section 210(1), every person (whether old assessee or not) is liable, of his own accord, to pay advance tax as per his own *suo motu* computation according to new section 209(1)(a) and (d) for and from financial year 1988-89. Such liability extends to pay, on or before each of the due dates specified in section 211, the appropriate percentages specified in section 211. The new section 210(1) lays emphasis on payment of advance tax and there is no need to file an estimate of advance tax or a statement of advance tax as is required under the existing section 209A.

Subsequent instalment may be revised.—New section 210(2) enables a person, who has already paid any instalment or instalments of advance tax under section 210(1), to revise the subsequent instalment or instalments of advance tax in accordance with his subsequent estimate of 'current income' without any requirement of filing of a revised estimate of advance tax as required under the existing provisions.

Demand of advance tax from old assessee.—Where an old assessee, despite the legal obligation cast upon him under section 210(1), fails to pay advance tax, new section 210(3) empowers, w.e.f. 1-4-1988, the Assessing Officer to issue a notice of demand requiring such an assessee to pay advance tax on the specified date or dates. Such a demand can be raised during the relevant financial year before the end of the February. Such demand is to be calculated as per the provisions of new section 209(1)(b) and (d).

These provisions are on the lines of the existing sections 210(1) and 210(2).

Revising a demand already made.—New section 210(4) empowers, w.e.f. 1-4-1988, the Assessing Officer to make an upward revision of the demand already raised under section 210(3) where, subsequent to the raising of such demand and before 1st day of March,—

—a return of income in respect of any later year has been furnished,
or

—any assessment for any later year has been made at a higher figure. These provisions are on the lines of the existing section 210(3).

Intimation for lessening demanded advance tax.—New section 210(5) enables an assessee, who has been required to pay advance tax as per demand under section 210(3) or revised demand under section 210(4), to send an intimation in the prescribed form of his own estimate of 'current income' so as to reduce the amount of advance tax so demanded.

Obligation to pay higher advance tax.—New section 210(6) makes it obligatory for an assessee, against whom a demand under section 210(3), or a revised demand under section 210(4), has been raised, to pay higher advance tax in accordance with his own calculation of advance tax, if the amount of advance tax on 'current income' as per his own estimate is likely to be higher than the advance tax—

- demanded under section 210(3) or section 210(4), or
- intimated under section 210(5).

These provisions are on the lines of the existing sections 209A(4) and 212(3A) with the major difference that the liability to pay higher advance tax has been fastened without any margin at all.

Pages 3849-3850: section 211:

Substitution of new section for section 211.—By section 80 of the DTL(A) Act, 1987, the following section 211 has been substituted, w.e.f. 1-4-1988, namely:—

"211. Instalments of advance tax and due dates.—(1) Advance tax on the current income, calculated in the manner laid down in section 209 shall be payable by all the assesseees who are liable to pay the same in three instalments during each financial year, the due date of, and the amount payable in, each such instalment being as specified in the following Table:

TABLE

| Due date of instalment | Amount payable |
|---------------------------------|--|
| On or before the 15th September | Not less than twenty per cent. of such advance tax |
| On or before the 15th December | Not less than fifty per cent. of such advance tax, as reduced by the amount, if any, paid in the earlier instalment. |
| On or before the 15th March | The whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments: |

Provided that any amount paid by way of advance tax on or before the 31st day of March shall also be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act.

(2) If the notice of demand issued under section 156 in pursuance of an order of the Assessing Officer under sub-section (3) or sub-section (4) of section 210 is served after any of the due dates specified in sub-section (1), the appropriate part or, as the case may be, the whole of the amount of the advance tax specified in such notice shall be payable on or before each of those dates as fall after the date of service of the notice of demand.”.

ANNOTATIONS

Due dates for payment of advance tax in fixed percentages.—New section 211(1), operative from 1-4-1988, specifies three uniform due dates for payment of advance tax in three instalments by all categories of assessee fastened with such liability. Further, a fixed percentage of the advance tax payable is required to be paid on or before each of the due dates. These are as under:—

| <i>Due date(s) of instalment</i> | <i>Amount payable</i> |
|----------------------------------|---|
| On or before 15th September | Not less than 20% of advance tax payable |
| On or before 15th December | Not less than 50% of advance tax payable as reduced by any sum, if any, paid in first instalment |
| On or before 15th March | Whole amount of advance tax payable as reduced by any sum, if any, paid in first and/or second instalment(s). |

The proviso to new section 211(1) provides that any payment of advance tax made before 31st March is also to be treated as advance tax paid during the financial year for all the purposes of the Act. This provision has set at rest the controversy in the judicial opinions on the point.

Demanded tax to be paid on remaining instalments after service.—New section 211(2), operative from 1-4-1988, provides that where a demand notice for advance tax in pursuance of an order under section 210(3) or 210(4) is served after any of the due dates specified in section 211(1), the whole or the appropriate part of the demanded advance tax is to be paid on the remaining due date(s).

Pages 3853-3855 and 3862-3863: sections 212 and 213:

Omission of sections 212 and 213.—By section 81 of the DTL(A) Act, 1987, section 212, which deals with filing of estimate of advance tax by the assessee, and section 213, which deals with deferment of instalment of advance tax where income consists of commission receipts, have been omitted, w.e.f. 1-4-1988, as these provisions are not needed under the new scheme for payment of advance tax.

Pages 3864-3865: section 214:

Amendment of section 214.—By section 82 of the DTL(A) Act, 1987, section 214 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1A), after the word and figures “section 264”, the words, brackets, figures and letter “or an order of the Settlement Commission under sub-section (4) of section 245D” have been inserted;

(b) after sub-section (2), the following sub-section (3) has been inserted, namely:—

“(3) This section and sections 215, 216 and 217 shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment year and, in the application of the said sections to the assessment for any earlier assessment year, references therein [except in sub-section (1A) and sub-section (3) of section 215] to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.”.

ANNOTATIONS

Section 214(1A) amended.—As a result of insertion (w.e.f. 1-4-1989) in section 214(1A) of a reference to an order of the Settlement Commission under section 245D(4), increase or reduction in the amount of interest payable by the Government to the assessee under section 214 has become possible also in pursuance of such an order.

Provisions of sections 214, 215, 216 and 217 not to apply for and from assessment year 1989-90.—By the newly inserted (w.e.f. 1-4-1989) section 214(3), the provisions of sections 214, 215, 216 and 217 have been made inoperative for and from assessment year 1989-90. That section 214(3) also clarifies that references in those sections [except section 214(1A) and section 215(3)], to the other provisions of the Act, for any assessment year upto and including assessment year 1988-89, are to be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

Pages 3874-3875: section 215:

Amendment of section 215.—By section 83 of the DTL(A) Act, 1987, in section 215(3), after the word and figures “section 264”, the words, brackets, figures and letter “or an order of the Settlement Commission under sub-section (4) of section 245D” have been inserted, w.e.f. 1-4-1989.

ANNOTATIONS

Section 215(3) amended.—As a result of insertion (w.e.f. 1-4-1989) in section 215(3) of a reference to an order of the Settlement Commission

under section 245D(4), increase or reduction in the amount of interest payable by the assessee under section 215 has become possible also in pursuance of such an order.

Pages 3900-3901: section 218:

Substitution of new section for section 218.—By section 84 of the DTL(A) Act, 1987, the following section 218 has been substituted, w.e.f. 1-4-1988, namely:—

“218. When assessee deemed to be in default.—If any assessee does not pay on the date specified in sub-section (1) of section 211, any instalment of advance tax that he is required to pay by an order of the Assessing Officer under sub-section (3) or sub-section (4) of section 210 and does not, on or before the date on which any such instalment as is not paid becomes due, send to the Assessing Officer an intimation under sub-section (5) of section 210 or does not pay on the basis of his estimate of his current income the advance tax payable by him under sub-section (6) of section 210, he shall be deemed to be an assessee in default in respect of such instalment or instalments.”

ANNOTATIONS

Substituted section 218.—The substitution (w.e.f. 1-4-1988) of a new section 218, in place of the existing section 218, has been necessitated consequent upon the change in the scheme of payment of advance tax as per the substituted sections 210 and 211.

Under the new section 218, an assessee is deemed to be an assessee in default, if he—

- does not pay, on the date specified in section 211(1), any instalment of advance tax that he is required to pay by an order of the Assessing Officer under section 210(3) or 210(4) and does not, on or before the date on which any such instalment as is not paid becomes due, send to the Assessing Officer an intimation under section 210(5), or
- does not pay on the basis of his estimate of his ‘current income’ the advance tax payable by him under section 210(6).

Page 3903: section 219:

Amendment of section 219.—By section 126(21) of the DTL(A) Act, 1987, the proviso to section 219 has been omitted, w.e.f. 1-4-1989. This omission is consequential to the omission, by that Act, of section 141A.

Pages 3907-3908: section 220:

Amendment of section 220.—By section 85 of the DTL(A) Act, 1987, section 220 has been amended, w.e.f. 1-4-1989, as under:—

'(a) in sub-section (1), for the words "thirty-five days", wherever they occur, the words "thirty days" have been substituted;

(b) in sub-section (2),—

(i) for the words, brackets and figures "fifteen per cent. per annum from the day commencing after the end of the period mentioned in sub-section (1)"; the words, brackets and figure "one and one-half per cent. for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid" have been substituted;

(ii) in the proviso, after the word and figures "section 264", the words, brackets, figures and letter "or an order of the Settlement Commission under sub-section (4) of section 245D" have been inserted;

(iii) after the proviso, the following proviso has been inserted, namely: —

"Provided further that in respect of any period commencing on or before the 31st day of March, 1989, and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent. for every month or part of a month.".

ANNOTATIONS

Assessed tax to be paid in a shorter period.—As a result of the amendment (w.e.f. 1-4-1989) of section 220(1), the amount specified in a notice of demand under section 156 has been made, ordinarily, payable within 30 days of the service of such notice. It may be noted that under the un-amended section 220(1) such period is 35 days.

Rate of interest increased.—As a result of the amendment (w.e.f. 1-4-1989) of section 220(2), the rate of interest payable by an assessee in default has been increased from 15% per annum to 1½% for every month or part of a month during which an assessee continues to be in default in respect of any amount referred to in section 220(1).

As a result of the amendment (w.e.f. 1-4-1989) of the proviso to section 220(2), any reduction of the amount on which interest is payable under section 220(2) in pursuance of an order of the Settlement Commission under section 245D(4) will cause consequential reduction in the amount of interest payable under section 220(2).

Increased rate of interest to apply also for continuing defaults after 31-3-1989.—The newly inserted (w.e.f. 1-4-1989) second proviso to section 220(2) provides that where the duration of default includes both the period prior to 1-4-1989 and also period subsequent to that date, the calculation of interest for the period up to 31-3-1989 has to be made at the rate

of 15% per annum and the calculation of interest for the period from 1-4-1989 has to be made at the rate of 1½% for every month or part of a month.

Page 3948: section 222:

Amendment of section 222.—By section 86 of the DTL(A) Act, 1987, section 222 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) in sub-section (1), for the portion beginning with the words “When an assessee is in default” and ending with the words “in accordance with the rules laid down in the Second Schedule—”, the following has been substituted, namely:—

“When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee (such statement being hereafter in this Chapter and in the Second Schedule referred to as “certificate”) and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—”;

(b) for sub-section (2), the following sub-section (2) has been substituted, namely:—

“(2) The Tax Recovery Officer may take action under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.”.

ANNOTATIONS

Requirement of forwarding a certificate to the TRO has been dispensed with.—Under the existing provisions of section 222(1), the Income-tax Officer is required to forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee and only then the Tax Recovery Officer assumes jurisdiction in the case. The amended section 222(1) dispenses with such a requirement, w.e.f. 1-4-1989. Under the new provisions, the Tax Recovery Officer will assume jurisdiction automatically by specifying the amount of arrears due from the assessee in a prescribed form.

Substituted section 222(2).—The substitution of section 222(2) is consequent upon the amendment of section 222(1). The newly substituted section 222(2) empowers, w.e.f. 1-4-1989, the Tax Recovery Officer to take action under section 222(1), notwithstanding that recovery proceedings for arrears by any other mode have been taken.

Pages 4029-4030, 4032 and 4033: sections 223, 224 and 225:

Substitution of new sections for sections 223, 224 and 225.—By section 87 of the DTL(A) Act, 1987, the following sections 223, 224 and 225 have been substituted, w.e.f. 1-4-1989, namely:—

“223. Tax Recovery Officer by whom recovery is to be effected.—

(1) The Tax Recovery Officer competent to take action under section 222 shall be—

(a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate, or

(b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,

the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is authorised in this behalf by the Board in pursuance of section 120.

(2) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up—

(a) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction, or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do, he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or copy thereof had been drawn up by him.

224. Validity of certificate and cancellation or amendment thereof.—It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

225. Stay of proceedings in pursuance of certificate and amendment or cancellation thereof.—(1) It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when

he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.

(2) Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(3) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.”.

ANNOTATIONS

Substituted sections 223, 224 and 225.—The substituted (w.e.f. 1-4-1989)—

- section 223 relating to Tax Recovery Officer by whom recovery is to be effected;
- section 224 relating to the validity of certificate and cancellation or amendment thereof; and
- section 225 relating to stay of proceedings in pursuance of certificate and amendment or cancellation thereof,

incorporate the provisions of the existing sections 223, 224 and 225, also giving effect to the newly substituted section 120 and the amended section 222.

Pages 4038-4040: section 226:

Amendment of section 226.—By section 88 of the DTL(A) Act, 1987, section 226 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) for sub-section (1), the following sub-sections (1) and (1A) have been substituted, namely:—

“(1) Where no certificate has been drawn up under section 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.

(1A) Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.”;

(b) in sub-sections (2), (3), (4) and (5), for the words "Income-tax Officer", wherever they occur, the words "Assessing Officer or Tax Recovery Officer" have been substituted.'.

ANNOTATIONS

Assessing Officer cannot resort to section 226 after a certificate has been drawn up.—Under the substituted section 226(1), the Assessing Officer is empowered, w.e.f. 1-4-1989, to recover tax arrears by any one or more of the modes provided in section 226, only where no certificate has been drawn up under section 222. In other words, where a certificate has been drawn up under section 222, the Assessing Officer has been debarred from resorting to any one or more of the modes of section 226 for recovery of the tax arrears.

Tax Recovery Officer also empowered to resort to section 226.—The newly introduced section 226(1A) empowers, w.e.f. 1-4-1989, a Tax Recovery Officer to resort to any one or more of the modes of section 226 for recovery of tax arrears in a case where a certificate has been drawn up under section 222. Such power can be exercised without prejudice to the modes of recovery specified in section 222.

Page 4058: section 228:

Omission of section 228.—By section 89 of the DTL(A) Act, 1987, section 228, relating to recovery of Indian tax in Pakistan and Pakistan tax in India, has been omitted, w.e.f. 1-4-1989.

Pages 4058-4059: section 228A:

Amendment of section 228A.—By section 90 of the DTL(A) Act, 1987, section 228A has been amended, w.e.f. 1-4-1989, as under:—

'(a) in sub-section (1), in clause (a), for the words "specified in a certificate received from an Income-tax Officer", the words and figures "specified in a certificate drawn up by him under section 222" have been substituted;

(b) for sub-section (2), the following sub-section (2) has been substituted, namely:—

"(2) Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country), forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country."'. .

The amendments made in section 228A are consequent upon the amendment of section 222, w.e.f. 1-4-1989.

Pages 4060-4061: section 230:

Amendment of section 230.—By section 91 of the DTL(A) Act, 1987, in section 230(1), for the portion beginning with the words “no person who is not domiciled in India”, and ending with the words “shall leave the territory of India”, the following portion has been substituted, w.e.f. 1-4-1989, namely:—

“no person—

- (a) who is not domiciled in India; or
- (b) who is domiciled in India at the time of his departure, but—
 - (i) intends to leave India as an emigrant; or
 - (ii) intends to proceed to another country on a work permit with the object of taking up any employment or other occupation in that country; or
 - (iii) in respect of whom circumstances exist which in the opinion of an income-tax authority, render it necessary for him to obtain a certificate under this section,

shall leave the territory of India”.

ANNOTATIONS

Scope of section 230(1) has been widened.—Under the existing provisions of section 230(1) (operative up to 31-3-1989), *inter alia*, the Indian domiciles who, in the opinion of an income-tax authority, have no intention of returning to India are required to obtain tax clearance certificates prior to their leaving India. Under the amended section 230(1), operative from 1-4-1989, such Indian domiciles, who are leaving India—

- as emigrants; or
- for employment or other occupation abroad; or
- under such circumstances which, in the opinion of an income-tax authority, render it necessary for them to obtain tax clearance certificates,

are required to obtain tax clearance certificates prior to their leaving India.

Page 4070: section 230A:

Amendment of section 230A.—By section 92 of the DTL(A) Act, 1987, in section 230A(1), for the words “fifty thousand rupees”, the words “one lakh rupees” have been substituted, w.e.f. 1-4-1989.

ANNOTATIONS

Provisions of section 230A(1) liberalised.—Under the amended section 230A(1), the requirement of production of a tax clearance certificate under that section before the registering authority by the transferor is to be fulfilled, with effect from 1st April, 1989, only where the document to be got registered involves a transfer, etc., of an immovable property valuing Rs. 1,00,000 or more (which up to 31-3-1989 is Rs. 50,000 or more).

Pages 4078-4079: section 231:

Omission of section 231.—By section 93 of the DTL(A) Act, 1987, section 231, relating to the period for commencing recovery proceedings, has been omitted, w.e.f. 1-4-1989.

As a result of the omission of section 231, the recovery proceedings can be commenced at any time without any period of limitation.

Page 4085: section 234:

Omission of section 234.—By section 126(22) of the DTL(A) Act, 1987, section 234, relating to adjustment of tax paid by deduction or advance payment in a provisional assessment for refund under section 141A, has been omitted, w.e.f. 1-4-1989. The omission is consequential to the omission, by that Act, of section 141A.

Page 4086: new sections 234A, 234B and 234C:

Insertion of new sections 234A, 234B and 234C.—By section 94 of the DTL(A) Act, 1987, in Chapter XVII, after section 234, the following heading and sections 234A, 234B and 234C have been inserted, w.e.f. 1-4-1989, namely:—

'F.—Interest chargeable in certain cases

234A. Interest for defaults in furnishing return of income.—

(1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—

(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of the assessment under section 144,

on the amount of the tax on the total income as determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source.

Explanation 1.—In this section, “due date” means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.

Explanation 2.—In this sub-section and sub-section (3), “tax on the total income as determined on regular assessment” shall not include the additional income-tax, if any, payable under section 158B.

Explanation 3.—Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

(2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section.

(3) Where the return of income for any assessment year, required by a notice under section 148 issued after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,—

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, ending on the date of completion of the re-assessment or re-computation under section 147,

on the amount by which the tax on the total income determined on the basis of such re-assessment or re-computation exceeds the tax on the total income determined on the basis of the earlier assessment aforesaid.

Explanation.—In this sub-section, “tax on the total income determined on the basis of the re-assessment or re-computation under section 147” shall not include the additional income-tax, if any, payable under section 158B.

(4) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount of tax on which interest was payable under sub-section (1) or sub-section (3) of this section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

234B. Interest for defaults in payment of advance tax.—(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent. of the assessed tax, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of the regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

Explanation 1.—In this section, “assessed tax” means the tax on the total income determined on the basis of the regular assessment, as reduced by the amount of tax deducted at source in accordance with the provisions of Chapter XVIIB on any income which is subject to such deduction and which is taken into account in computing such total income.

Explanation 2.—Where in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 3.—In *Explanation 1* and in sub-section (3), “tax on the total income determined on the basis of the regular assessment” shall not include the additional income-tax, if any, payable under section 158B.

(2) Where, before the date of completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,—

- (i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;
- (ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(3) Where, as a result of an order of re-assessment or re-computation under section 147, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the day following the date of the regular assessment referred to in sub-section (1) and

ending on the date of the re-assessment or re-computation under section 147, on the amount by which the tax on the total income determined on the basis of the re-assessment or re-computation exceeds the tax on the total income determined on the basis of the regular assessment aforesaid.

Explanation.—In this sub-section, “tax on the total income determined on the basis of the re-assessment or re-computation under section 147” shall not include the additional income-tax, if any, payable under section 158B.

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

- (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;
- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

234C. Interest for deferment of advance tax.—(1) Where, in any financial year, the advance tax paid by the assessee on his current income on or before the 15th day of September is less than twenty per cent. of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than fifty per cent. of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent. per month of the shortfall from (*sic*) for a period of three months on the amount of the shortfall from twenty per cent. or, as the case may be, fifty per cent. of the tax due on the returned income.

Explanation.—In this section, “tax due on the returned income” means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid, as reduced by the amount of tax deductible at source in accordance with the provisions of Chapter XVIIIB on any income which is subject to such deduction and which is taken into account in computing such total income.

- || (2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.'.

ANNOTATIONS

Charge of interest for defaults in furnishing return of income is mandatory.—Section 234A, operative w.e.f. 1-4-1989, makes provisions for charging interest for delay in filing, or non-filing of, a return of income. The charge of interest under this new section is mandatory in nature.

Defaults attracting charge of interest under section 234A.—The defaults, which attract charge of interest under section 234A, are as under:—

- (i) Furnishing of a return of income for any assessment year—
—under section 139(1) or
—under section 139(4) or
—in response to a notice under section 142(1)
after the due date [which means the date specified in section 139(1) as applicable in the case of the assessee concerned] [s. 234A(1)].
- (ii) Non-furnishing of a return of income for any assessment year—
—under section 139(1) or
—in response to a notice under section 142(1) [s. 234A(1)].
- (iii) Furnishing of a return of income for any assessment year which is required to be furnished by a notice under section 148 issued after the completion of an assessment under—
—section 143(3) or
—section 144 or
—section 147
after the expiry of the time allowed under such notice [s. 234A(3)].
- (iv) Non-furnishing of a return of income for any assessment year which is required to be furnished by a notice under section 148 issued after the completion of an assessment under—
—section 143(3) or
—section 144 or
—section 147 [s. 234A(3)].

These defaults, hereinafter, referred to as defaults (i), (ii), (iii) and (iv) above.

Rate of interest enhanced.—The rate of interest, as per sections 234A(1) and 234A(3), is 2% for every month or part of a month and it is applicable for defaults in respect of assessments for assessment year 1989-90 and subsequent assessment years. The rate of interest under the existing provisions of section 139(8), which are operative upto assessment year 1988-89, is 15% per annum.

Periods for which interest is to be charged.—The periods for which such interest is to be charged for different defaults are as under:—

- (1) For default (i) above, such vulnerable period commences on the date immediately following the 'due date' and ends on the date of furnishing the return [s. 234A(1)(a)].
- (2) For default (ii) above, such vulnerable period commences on the date immediately following the 'due date' and ends on the date of completion of assessment under section 144 [s. 234A(1)(b)].
- (3) For default (iii) above, such vulnerable period commences on the day immediately following the expiry of the time allowed under section 148 notice and ends on the date of furnishing the return [s. 234A(3)(a)].
- (4) For default (iv) above, such vulnerable period commences on the day immediately following the expiry of the time allowed under section 148 notice and ends on the date of completion of the reassessment or recomputation under section 147 [s. 234A(3)(b)].

Amounts on which interest is to be charged.—The amounts on which such interest is to be charged are as under:—

- (1) For defaults (i) and/or (ii) above, such interest is to be charged, as per section 234A(1), on the amount of the tax on the total income as determined on regular assessment as reduced by—
—the advance tax, if any, paid and
—any tax deducted at source.
Such tax is not to include the additional tax, if any, payable under section 158B [*Explanation 2*]. It is also provided that an assessment made for the first time under section 147 is also to be regarded as a 'regular assessment' in that regard [*Explanation 3*].
- (2) For defaults (iii) and/or (iv) above, such interest is to be charged, as per section 234A(3), on the difference between—
—the amount of the tax on the total income determined on the basis of reassessment or recomputation under section 147, and
—the amount of the tax on the total income determined on the basis of the earlier assessment under section 143(3) or section 144 or section 147.

For such computation, additional income-tax, if any, payable under section 158B is not to be taken into account [*Explanation*].

Interest payable to be reduced by interest already paid.—Section 234A(2) provides that the interest payable under section 234A(1) is to be reduced by the interest, if any, paid under section 140A on that account.

Proportionate increase or reduction to be made.—Section 234A(4) makes provisions for proportionate increase or reduction of the amount of interest payable under section 234A(1) or 234A(3), if the amount of tax on which such interest was payable has been increased or reduced as a result of any of the orders mentioned in section 234A(4).

Applicability of the provisions.—Section 234A(5) specifically provides that the provisions of section 234A are to have application in respect of assessments for assessment year 1989-90 and subsequent assessment years.

Charge of interest for defaults in payment of advance tax is also mandatory.—Section 234B, operative w.e.f. 1-4-1989, makes provisions for charging interest for non-payment or short-payment of advance tax. The charge of interest under this new section is also mandatory in nature.

Defaults attracting charge of interest under section 234B.—The defaults, which attract charge of interest under section 234B, are as under:—

- (1) Failure to pay advance tax during a financial year which an assessee is liable to pay under section 208 [s. 234B(1)].
- (2) Payment of advance tax under section 210 by an assessee, which is less than 90% of the 'assessed tax' [as defined].

Rate of interest enhanced.—The rate of interest, under section 234B, is 2% for every month or part of a month and it is applicable for defaults in respect of assessments for assessment year 1989-90 and subsequent assessment years. The rate of interest under the existing sections 215, 216 and 217, which are operative upto assessment year 1988-89, is 15% per annum.

Period for which interest is to be charged.—The period for which interest is to be charged under section 234B(1) is, ordinarily, to commence from the 1st day of April next following the relevant financial year and to end on the date of 'regular assessment'.

For this purpose, an assessment made for the first time under section 147 is to be regarded as a 'regular assessment' [*Explanation 2*].

Amounts on which interest is to be charged.—The amounts on which interest is to be charged under section 234B(1) are as under:—

- (i) For default of failure to pay advance tax, such interest is to be charged on an amount equal to the 'assessed tax'.

The expression 'assessed tax', for this purpose, means the tax on the total income determined on the basis of the regular assessment, as reduced by the amount of tax deducted at source in accordance with the provisions of Chapter XVIIIB on any income—

—which is subject to such deduction and

—which is taken into account in computing such total income

[*Explanation 1*]

- (ii) For default of short-payment, such interest is to be charged on the difference between—
 —the 'assessed tax' [as defined] and
 —the amount of advance tax paid by the assessee.

For the above purposes, the 'additional income-tax', if any, payable under section 158B is not to be taken into account.

Calculation of interest if tax is paid before 'regular assessment'.—Section 234B(2) makes provisions for a situation where, before the date of completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise.

In such a situation, interest is to be calculated in accordance with the provisions of section 234B(1) upto the date on which the tax was so paid, and reduced by the interest, if any, paid under section 140A towards interest chargeable under section 234B. Thereafter, the interest is to be calculated at the rate of 2% for every month or part of a month on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

Increase of interest in pursuance of a re-assessment under section 147.—Section 234B(3) makes provisions for calculation of interest where the amount on which the interest was payable under section 234B(1) is increased as a result of an order of reassessment or recomputation under section 147. In such a case, the assessee is liable to pay interest at the rate of 2% for every month or part of a month for the period—

- commencing on the day following the date of the regular assessment referred to in section 234B(1) and
- ending on the date of the reassessment or recomputation under section 147

on the amount of difference between—

- the tax on the total income determined on the basis of the re-assessment or recomputation *and*
- the tax on the total income determined on the basis of the regular assessment referred to in section 234B(1).

For such computation, the additional income-tax, if any, payable under section 158B is not to be taken into account [*Explanation*].

Proportionate increase or reduction to be made.—Section 234B(4) makes provisions for proportionate increase or reduction of the amount of interest payable under section 234B(1) or 234B(3), if the amount of tax on which such interest was payable has been increased or reduced as a result of any of the orders mentioned in section 234B(4),

Applicability of the provisions.—Section 234B(5) specifically provides that the provisions of section 234B are to have application in respect of assessments for assessment year 1989-90 and subsequent assessment years.

Charge of interest for deferment of advance tax.—Section 234C provides for charge and mode of computation of interest where there has been less payments than the appropriate percentages specified for the first two due dates.

The liability to pay interest under section 234C(1) arises in the following two situations:—

- (1) Where the advance tax paid on or before the first due date, *i.e.*, 15th September, is less than 20% of the 'tax due on the returned income' [as defined in the *Explanation*].
- (2) Where the advance tax paid on or before the second due date, *i.e.*, 15th December, is less than 50% of the 'tax due on the returned income' [as defined in the *Explanation*].

In such circumstances, the assessee is liable to pay interest at the rate of 1½% per month for a period of three months on the amount of the shortfall from 20% or, as the case may be, 50% of the 'tax due on the returned income'.

The provisions of section 234C are applicable for and from assessment year 1989-90.

Page 4113: section 240:

Amendment of section 240.—By section 95 of the DTL(A) Act, 1987, to section 240, the following proviso has been added, w.e.f. 1-4-1989, namely:—

“Provided that where, by the order aforesaid,—

- (a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;
- (b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.”

ANNOTATIONS

New proviso added.—Clause (a) of the newly inserted (w.e.f. 1-4-1989) proviso to section 240 provides that where an assessment is set aside or cancelled with a direction for making a fresh assessment, the refund, if any, shall become due only after the fresh assessment is made. This clause nullifies the effect of the judicial pronouncements discussed under the paragraph titled “*Effect of set aside of assessment on amount already paid*” at page 4114 of Vol. 4.

Clause (b) of the newly inserted (w.e.f. 1-4-1989) proviso to section 240 provides that where an assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the returned total income. Thus, as a result of this clause, an assessee

is not entitled to get refund of the tax chargeable on the returned income even where an assessment is annulled by the appellate authority. This proviso nullifies the effect of the decision of the Karnataka High Court in *R. Gopal Ramnarayan v ITO* [(1980) 126 ITR 369 (Karn)] discussed at pages 4114-4115 of Vol. 4 under the paragraph titled "*Effect of annulment of assessment on amounts already paid*".

Page 4117: section 243:

Amendment of section 243.—By section 96 of the DTL (A) Act, 1987, after section 243(2), the following section 243(3) has been inserted, w.e.f. 1-4-1989, namely:—

“(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment years.”

ANNOTATIONS

Section 243 not to apply for and from assessment year 1989-90.—The newly inserted (w.e.f. 1-4-1989) section 243(3) specifically provides for the non-applicability of section 243 for and from assessment year 1989-90.

Pages 4121-4122: section 244:

Amendment of section 244.—By section 97 of the DTL(A) Act, 1987, after section 244(2), the following section 244(3) has been inserted, w.e.f. 1-4-1989, namely:—

“(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment years.”

ANNOTATIONS

Section 244 not to apply for and from assessment year 1989-90.—The newly inserted (w.e.f. 1-4-1989) section 244(3) specifically provides for the non-applicability of section 244 for and from assessment year 1989-90.

Page 4128: new section 244A:

Insertion of new section 244A.—By section 98 of the DTL(A) Act, 1987, after section 244, the following section 244A has been inserted, w.e.f. 1-4-1989, namely:—

“244A. Interest on refunds.—(1) Where, in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:—

- (a) where the refund is out of any tax paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one and one-half per cent. for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent. of the tax as determined on regular assessment;

- (b) in any other case, such interest shall be calculated at the rate of one and one-half per cent. for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, “date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.”.

ANNOTATIONS

Interest on refunds.—The newly inserted (w.e.f. 1-4-1989) section 244A(1), in its clause (a), provides that where the refund is of any

advance tax or tax deducted at source, the interest is payable for the period starting from the first day of assessment year to the date of the grant of refund. No interest is, however, payable if the excess payment is less than 10 per cent. of the tax determined on regular assessment.

The new section 244A(1), in its clause (b), provides that where refund is of tax other than advance tax or tax deducted at source, the interest is to be paid for the period starting from the date of payment of such tax or penalty up to the date on which the refund is granted. It is also clarified by way of an *Explanation* that "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand is paid in excess of such demand.

Delay attributable to assessee to be excluded.—The newly inserted (w.e.f. 1-4-1989) section 244A(2) secures that for the purpose of computing the period of delay under section 244A(1), any delay in proceedings (including assessment proceedings) attributable to the assessee is to be excluded.

Proportionate increase or reduction to be made.—Section 244A(3) makes provisions for proportionate increase or reduction of the amount of interest payable under section 244A(1), if the amount of tax on which such interest was payable has been increased or reduced as a result of any of the orders mentioned in section 244A(3).

Applicability of the provisions.—Section 244A(4) specifically provides that the provisions of section 244A are to have application in respect of assessments for assessment year 1989-90 and subsequent assessment years.

Pages 4179-4182: sections 246 and 246A:

Substitution of new sections 246 and 246A for section 246.—By section 99 of the DTL(A) Act, 1987, in Chapter XX, for the sub-heading "*A.—Appeals to the Appellate Assistant Commissioner and Commissioner (Appeals)*" and section 246, the following sub-heading and sections 246 and 246A have been substituted, w.e.f. 1-4-1989, namely:—

'A.—Appeals or applications to the Deputy Commissioner (Appeals) and Commissioner (Appeals)

246. Appealable orders.—(1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) against such order—

- (a) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

- (b) an order of assessment, re-assessment or re-computation under section 147 or section 150;
- (c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (d) an order made under section 163 treating the assessee as the agent of a non-resident;
- (e) an order under sub-section (2) or sub-section (3) of section 170;
- (f) an order under section 171;
- (g) any order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year;
- (i) an order under section 201;
- (j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year;
- (k) an order under section 237;
- (l) an order imposing a penalty under—
 - (i) section 221, or
 - (ii) section 271, section 271A, section 271B, section 271C, section 271D, section 271E or section 272A;
 - (iii) sub-section (1) of section 271, section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years.

(2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against such order—

- (a) an order specified in sub-section (1) where such order is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124;
- (b) an order specified in clauses (a) to (e) (both inclusive) and clauses (i) to (l) (both inclusive) of sub-section (1) made against the assessee, being a company;

- (c) an order of assessment made after the 30th day of September, 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A;
- (d) an order made by the Deputy Commissioner under section 154;
- (e) an order imposing a penalty under section 271B;
- (f) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
- (g) an order imposing a penalty under clause (c) of sub-section (1) of section 271, as it stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years, where such penalty has been imposed with the previous approval of the Deputy Commissioner under the proviso to clause (iii) of sub-section (1) of that section;
- (h) an order made by an Assessing Officer (other than Deputy Commissioner) under the provisions of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(3) Notwithstanding anything contained in sub-section (1), the Board or the Director-General, or Chief Commissioner or Commissioner if so authorised by the Board, may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) if the Board or, as the case may be, the Director-General, or Chief Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be reheard.

Explanation.—For the purposes of this section,—

- (a) “appointed day” means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No. 2) Act, 1977 (29 of 1977);
- (b) “status” means the category under which the assessee is assessed as “individual”, “Hindu undivided family” and so on.

246A. Application by the assessee in certain cases.—(1) Where, before furnishing a return of income under section 139 or, as the

case may be, sub-section (1) of section 142 for any assessment year, any question arises as to whether,—

(a) any income is includible or not in computing the total income (hereafter in this section referred to as the disputed income),
or

(b) any deduction, allowance or other relief is admissible or not in computing the total income (hereafter in this section referred to as the disputed deduction),

the assessee shall, after furnishing such return, make an application under sub-section (2):

Provided that the assessee,—

(i) shall include in such return the disputed income and shall not claim the disputed deduction; and

(ii) shall also pay thirty per cent. of the tax due on the disputed income and in respect of the amount of disputed deduction.

(2) The application under sub-section (1) may be made within thirty days of furnishing the aforesaid return to the Deputy Commissioner (Appeals) or, as the case may be, to the Commissioner (Appeals).

(3) For the purposes of disposing of an application under sub-section (1), the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) may—

(a) conduct such inquiry, or call for such books of accounts, other documents or information which he deems necessary;
or

(b) direct the Assessing Officer concerned to conduct such inquiry and furnish the report thereon,

and thereafter decide the question raised in the application and pass such orders thereon as he thinks fit.

(4) The provision relating to filing of appeals under this Act shall, so far as may be, apply to the making of an application under this section as if such application were an appeal.’

ANNOTATIONS

Section 246(1) substituted.—The existing section 246(1), in its sub-clauses (b) to (o), specifies the orders against which an assessee is entitled to prefer appeals to the Appellate Assistant Commissioner. The newly substituted (w.e.f. 1-4-1989) section 246(1), in its clauses (a) to (l) specifies the orders against which an assessee is entitled to prefer appeals to the Deputy Commissioner (Appeals), which is a redesignation of the Appel-

late Assistant Commissioner. On a comparative study of the old and new provisions of section 246(1), it may be seen that—

| <i>clause—of new section 246(1) (effective from 1-4-1989)</i> | <i>corresponds to clause—of the existing section 246(1) (effective upto 31-3-1989)</i> |
|---|--|
| (a) | (c) |
| (b) | (e) |
| (c) | (f) |
| (d) | (g) |
| (e) | (h) |
| (f) | (i) |
| (g) (covers orders for assessment years upto 1988-89) | (j) |
| (h) (covers orders for assessment years upto 1988-89) | (k) |
| (i) | (l) |
| (j) (covers orders for assessment years upto 1988-89) | (m) |
| (k) | (n) |
| (l)(i) | (o)(ia) |
| (l)(ii) | (o)(iii) & (o)(iiia) |

The following clauses of the existing section 246(1) do not find a place in the new section 246(1):—

| <i>Clause—of the existing section 246(1)</i> | <i>does not find a place in consequence of—</i> |
|--|--|
| (b) | omission of section 131(2). |
| (d) | omission of section 146. |
| (o)(i) and o(ii) | omission of levy of penalty in section 140A and omission of section 270. |
| (o)(iv) | omission of section 272. |

In addition to the above, new section 246(1)(l)(ii) also makes provision for preferring appeals against orders —

- under section 271B [against which there is no appeal upto 31-3-1989];
- under newly inserted sections 271C, 271D and 271E; and
- under substituted section 272A.

Further, new section 246(1)(l)(ii) incorporates provisions for preferring appeals against orders passed under existing sections 271(1), 272, 272B and 273 in respect of any assessment for assessment year 1988-89 or any earlier assessment years.

Section 246(2) substituted.—The existing section 246(2), in its clauses (a) to (j), specifies the orders against which an assessee is entitled to prefer appeals to the Commissioner (Appeals). The newly substituted (w.e.f. 1-4-1989) section 246(2), in its clauses (a) to (h), specifies the orders against which an assessee is entitled to prefer appeals to the Commissioner

(Appeals). On a comparative study of the old and new provisions of section 246(2), it may be seen that—

| <i>clause—of new section 246(2) (effective from 1-4-1989)</i> | <i>corresponds to clause—of the existing section 246(2) (effective upto 31-3-1989)</i> |
|---|--|
| (a) | (b) |
| (b) | (a) |
| (c) | (d) |
| (d) | (ff) |
| (e) | (g) |
| (f) | (gg) |
| (g) (covers orders for assessment years upto 1988-89) | (h) |
| (h) | (i). |

Transitional provisions not enacted.—The provisions of the existing sections 246(3) and 246(4), which enact transitional provisions with regard to appeals pending on 10-7-1978 and/or 1-6-1979 do not find a place in new section 246 as the same have become redundant presently.

Power to transfer appeals amplified.—The provisions of existing section 246(5), relating to the power of the Board to transfer appeals from an Appellate Assistant Commissioner to a Commissioner (Appeals) under certain circumstances have been re-enacted in new section 246(3) with amplification of the provisions and with the consequential changes. Under new section 246(3), the power to transfer appeals from a Deputy Commissioner (Appeals) to a Commissioner (Appeals) can be exercised not only by the Board but also by a Director-General or a Chief Commissioner or a Commissioner if so authorised by the Board.

Definitions re-enacted.—The definitions of the expressions “appointed day” and “status” as contained in *Explanation* to existing section 246 have been re-enacted in the *Explanation* to new section 246.

Newly introduced section 246A.—The newly introduced (w.e.f. 1-4-1989) section 246A, in its sub-sections (1) and (2), provides that in the case of a disputed income or deduction to be included by the assessee in a return of income under section 139 or under section 142(1), he has to make an application before the Deputy Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, within 30 days of furnishing the return provided he has included in such return the disputed income and has not claimed the disputed deduction and also has paid 30 per cent. of the tax due on the disputed income and in respect of the amount of disputed deduction. Section 246A(3) provides that the Deputy Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, may decide the question raised in the application and pass the necessary orders after either conducting the necessary enquiry himself or asking the Assessing Officer to conduct such enquiry and furnish the report thereon. Section 246A(4) provides that the provisions relating to filing of appeal under this Act are to apply to the making of an application under this section as if such application were an appeal.

Page 4240: section 247:

Omission of section 247.—By section 100 of the DTL(A) Act, 1987, section 247, relating to appeals by partners, has been omitted, w.e.f. 1-4-1989, consequent upon the change in the procedure for assessment of a firm and its partners.

Pages 4308-4309: section 253:

Amendment of section 253.—By section 126(23) of the DTL(A) Act, 1987, in section 253(1)(a), after the word and figures “section 154”, the word, figures and letter “section 246A” have been inserted, w.e.f. 1-4-1989.

This insertion is consequent upon the insertion, by that Act, of a new section 246A.

Pages 4627-4628: section 267:

Substitution of new section for section 267.—By section 101 of the DTL(A) Act, 1987, for section 267, the following section 267 has been substituted, w.e.f. 1-4-1989, namely:—

“267. **Amendment of assessment on appeal.**—Where as the result of an appeal under section 246 or section 253, any change is made in the assessment of a body of individuals or an association of persons or a new assessment of a body of individuals or an association of persons is ordered to be made, the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer either to amend the assessment made on any member of the body or association or make a fresh assessment on any member of the body or association.”.

ANNOTATIONS

Section 267 substituted.—The substitution (w.e.f. 1-4-1989) of section 267 is consequent upon—

- the introduction of a new scheme of taxation of firms and its partners;
- the redesignation of the Income-tax Officer as the Assessing Officer; and
- the redesignation of the Appellate Assistant Commissioner as the Deputy Commissioner (Appeals).

Page 4629: section 268:

Amendment of section 268.—By section 102 of the DTL(A) Act, 1987, in section 268, the words “or an application” have been omitted, w.e.f. 1-4-1989.

As a result of this amendment, w.e.f. 1-4-1989, in computing the period of limitation prescribed for an application under this Act, the day on which

the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, will not be eligible for exclusion.

Pages 4774-4775: section 269SS:

Amendment of section 269SS.—By section 103 of the DTL(A) Act, 1987, section 269SS has been amended, w.e.f. 1-4-1989, as under:—

‘(a) for the words “ten thousand rupees”, the words “twenty thousand rupees” have been substituted;

(b) after the proviso and before the *Explanation*, the following proviso has been inserted, namely:—

“Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.”.

ANNOTATIONS

Section 269SS amended.—Section 269SS prescribes the mode of taking or accepting certain loans and deposits. As a result of one of the amendments of section 269SS, the monetary limit for invoking the provisions of that section has been raised (w.e.f. 1-4-1989) to Rs. 20,000 from the existing (effective upto 31-3-1989) monetary limit of Rs. 10,000.

The newly inserted (w.e.f. 1-4-1989) second proviso to section 269SS saves those cases from the operation of section 269SS where both the persons involved in the transaction derive income from agriculture or neither of them has any income chargeable to tax under the Act.

Pages 4776-4777: section 269T:

Amendment of section 269T.—By section 104 of the DTL(A) Act, 1987, section 269T has been amended, w.e.f. 1-4-1989, as under:—

“(a) in sub-section (2),—

(i) after the words “no firm”, the words “or other person” have been inserted;

(ii) for the words “ten thousand rupees”, the words “twenty thousand rupees” have been substituted;

(b) in the *Explanation*, for clause (ii), the following clause (ii) has been substituted, namely:—

“(ii) “deposit” means any deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes deposit of any nature.”.

ANNOTATIONS

Ambit of section 269T widened.—Section 269T prescribes the mode of repayment of certain deposits. The existing (effective upto 31-3-1989) section 269T has application to companies (including the banking companies), co-operative societies and firms only. As a result of the amendment of section 269T, the ambit of section 269T has been expanded, w.e.f. 1-4-1989, so as to cover all persons. Further, the monetary limit for invoking the provisions of section 269T has been raised (w.e.f. 1-4-1989) to Rs. 20,000 from the existing (effective upto 31-3-1989) monetary limit of Rs. 10,000.

Also, the definition of the expression 'deposit' has been expanded, w.e.f. 1-4-1989, so as also to include, in the case of any person other than a company, deposit of any nature.

Page 4804: section 270:

Omission of section 270.—By section 105 of the DTL(A) Act, 1987, section 270, relating to imposition of penalty on failure to furnish information regarding securities, etc., as required by a notice under section 94(6), has been omitted, w.e.f. 1-4-1989.

It may be noted that the provisions of the omitted section 270 has been carried to the newly substituted section 272A(2)(a), w.e.f. 1-4-1989.

Pages 4804-4810: section 271:

Substitution of new section 271.—By section 106 of the DTL(A) Act, 1987, the following section 271 has been substituted, w.e.f. 1-4-1989, namely:—

“271. Failure to comply with notices.—If the Assessing Officer, in the course of any proceedings under this Act, is satisfied that any person has failed to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or with a direction issued under sub-section (2A) of section 142, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum which shall not be less than one thousand rupees but which may extend to twenty-five thousand rupees for each such failure.”

ANNOTATIONS

Section 271 substituted.—Under the existing section 271, operative upto 31-3-1989, penalty is leviable—

- under section 271(1)(i) for failure, or delay, in furnishing a return of income as specified in section 271(1)(a);
- under section 271(1)(ii) for failure to comply with notices as specified in section 271(1)(b);

—under section 271(1)(iii) for concealment of income, etc., as specified in section 271(1)(c).

The new section 271 does not contain any provision for levying penalty—

—for failure to furnish return, etc., as for such defaults the new section 234A provides for mandatory charge of interest; and

—for concealment of income, etc., as a result of the levy of additional income-tax under the new section 158B.

Instead, the new section 271 incorporates the provisions of the existing section 271(1)(b) so as to enable the Assessing Officer, w.e.f. 1-4-1989, to impose penalty where he is satisfied that the assessee has failed to comply with notice(s)/direction under section 142 and/or section 143. Under the existing provisions, penalty is computed with reference to the amount of tax which would have been avoided, whereas new provisions provide for minimum penalty of Rs. 1,000 which may extend to the maximum amount of Rs. 25,000 for each such failure.

The existing section 271(2), dealing with penalty leviable on a registered firm by treating it as unregistered firm and also the existing section 271(4), levying penalty on a partner who understates his share in a firm, are omitted as these have become infructuous under the new scheme for taxation of firms.

The existing section 271(3) has been omitted in consequence of omission of the existing section 271(1)(a).

Page 4954: section 271A:

Amendment of section 271A.—By section 107 of the DTL(A) Act, 1987, in section 271A, for the words “a sum which shall not be less than ten per cent. but which shall not exceed fifty per cent. of the amount of tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income”, the words “a sum which shall not be less than two thousand rupees but which may extend to one hundred thousand rupees” have been substituted, w.e.f. 1-4-1989.

ANNOTATIONS

Quantum of penalty enhanced.—The amendment to section 271A has enhanced the quantum of penalty leviable for failure to maintain or retain books of accounts, etc., as required by section 44AA of the Act. Under the existing provisions (effective upto 31-3-1989), the penalty is computed with reference to tax which would have been avoided if the returned income had been accepted. The new provisions (effective from 1-4-1989) provide for a minimum penalty of Rs. 2,000 extending up to a maximum of Rs. 1 lakh.

Page 4957: new sections 271C, 271D and 271E:

Insertion of new sections 271C, 271D and 271E.—By section 108 of the CAP: IT V-7—[10]

DTL(A) Act, 1987, after section 271B, the following sections 271C, 271D and 271E have been inserted w.e.f. 1-4-1989, namely:—

“271C. Penalty for failure to deduct tax at source.—If any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B, he shall be liable to pay, by way of penalty, a sum equal to the amount of the tax which he failed to deduct as aforesaid.

271D. Penalty for failure to comply with the provisions of section 269SS.—If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

271E. Penalty for failure to comply with the provisions of section 269T.—If a person repays any deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the deposit so repaid.”.

ANNOTATIONS

Penalty for failure to deduct tax at source.—New section 271C provides for imposition of penalty on any person who fails to deduct tax at source in contravention of the provisions of Chapter XVII-B of the Act. The penalty is of a sum equal to the amount of tax which should have been deducted at source. The existing provisions do not provide for any penalty in such cases. The penalty under the new provisions is in substitution of provisions of prosecution for such defaults as provided in the existing section 276B and is in addition to the charge of interest under section 201 of the Act.

Penalty for non-compliance of section 269SS.—New section 271D provides for imposition of penalty where any person takes any loan or deposit in contravention of the provisions of section 269SS. The amount of penalty is of a fixed sum equal to the amount of loan or deposit so taken. The new provisions are in substitution of the provisions for prosecution as provided in the existing section 276DD.

Penalty for non-compliance of section 269T.—New section 271E provides for imposition of penalty on a person repaying any deposit in contravention of the provisions of section 269T. The penalty is of a sum equal to the amount of the deposit so repaid. The provisions of the new section are in substitution of the provisions for prosecution as provided in the existing section 276E.

Page 4957: section 272:

Omission of section 272.—By section 109, section 272, relating to penalty for failure by any person to give notice of discontinuance of his business or profession, has been omitted, w.e.f. 1-4-1989. It may be noted that such provisions have been incorporated in the newly substituted section 272A(2)(b), w.e.f. 1-4-1989.

Pages 4958-4959: section 272A:

Substitution of new section for section 272A.—By section 110 of the DTL(A) Act, 1987, the following section 272A has been substituted, w.e.f. 1-4-1989, namely:—

272A. Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.—

(1) If any person,—

- (a)** being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by an income-tax authority in the exercise of its powers under this Act; or
- (b)** refuses to sign any statement made by him in the course of any proceedings under this Act, which an income-tax authority may legally require him to sign; or
- (c)** to whom a summons is issued under sub-section (1) of section 131 either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time; or

(d) fails to comply with the provisions of section 139A, he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(2) If any person fails—

- (a)** to comply with a notice issued under sub-section (6) of section 94; or
- (b)** to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176; or
- (c)** to furnish in due time any of the returns, statements or particulars mentioned in section 133 or section 206 or section 206A or section 206B or section 285B; or
- (d)** to allow inspection of any register referred to in section 134 or of any entry in such register or to allow copies of such register or of any entry therein to be taken; or
- (e)** to furnish the return of income which he is required to furnish under sub-section (4A) of section 139 or to furnish it within the time allowed and in the manner required under that sub-section; or

- (f) to deliver or cause to be delivered in due time a copy of the declaration mentioned in section 197A; or
- (g) to furnish a certificate as required by section 203; or
- (h) to deduct and pay tax as required by sub-section (2) of section 226;

he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees, but which may extend to two hundred rupees, for every day during which the failure continues.

(3) Any penalty imposable under sub-section (1) or sub-section (2) shall be imposed—

- (a) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceeding before an income-tax authority not lower in rank than a Deputy Director or a Deputy Commissioner, by such income-tax authority;
- (b) in a case falling under clause (f) of sub-section (2), by the Chief Commissioner or Commissioner; and
- (c) in any other case, by the Deputy Director or the Deputy Commissioner.

(4) No order under this section shall be passed by any income-tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

Explanation.—In this section, “income-tax authority” includes a Director-General, Director, Deputy Director and a Assistant Director while exercising the powers vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the matters specified in sub-section (1) of section 131.’

ANNOTATIONS

Newly substituted section 272A(1).—The new section 272A(1) (effective from 1-4-1989) prescribes a minimum penalty of Rs. 500, which may extend upto a maximum of Rs. 10,000 for each of defaults or failures enumerated in clauses (a), (b), (c) and (d) of section 272A(1), which are as under:—

| <i>Provisions</i> | <i>Subject-matter</i> |
|-------------------|--|
| (1) | (2) |
| a. 272A(1)(a) | deals with refusal to answer any question before an income-tax authority, and it incorporates the provisions of existing section 272A(1)(a); |
| a. 272A(1)(b) | deals with refusal to sign any statement, and it incorporates the provisions of existing section 272A(1)(b); |
| a. 272A(1)(c) | deals with non-compliance of summons issued under section 131(1), and it incorporates the provisions of existing section 131(2); |

| (1) | (2) |
|---------------|--|
| s. 272A(1)(d) | deals with failure to comply with the provisions of section 139A relating to allotment of permanent account numbers, and it incorporates the substance of existing section 272B. |

Newly substituted section 272A(2).—The new section 272A(2) brings together at one place various existing provisions dealing with the defaults now enumerated in clauses (a) to (h) of section 272A(2). Whereas the existing sections provide for different modes of computation of penalty for different defaults, the new section 272A(2) accords uniform treatment by providing for a minimum penalty of Rs. 100 extending to the maximum of Rs. 200 for every day of any of the specified defaults, which are as under:—

| <i>Provisions</i> | <i>Subject-matter</i> |
|-------------------|--|
| (1) | (2) |
| s. 272A(2)(a) | deals with failure to furnish information regarding securities, etc., and it incorporates the provisions of existing section 270; |
| s. 272A(2)(b) | deals with failure to give notice of discontinuance of business or profession, and it incorporates the provisions of existing section 272; |
| s. 272A(2)(c) | deals with failure to furnish certain returns and statements, and incorporates the provisions of existing section 272A(2)(d) with certain consequential changes; |
| s. 272A(2)(d) | deals with failure to allow inspection of registers, etc., and it incorporates the provisions of existing section 272A(2)(b); |
| s. 272A(2)(e) | deals with failure of a person referred to in section 80F(1) to furnish return of income of a charitable trust, etc., and it incorporates the provisions of existing section 271(1)(i)(a); |
| s. 272A(2)(f) | deals with failure to deliver in due time to the Commissioner a copy of the declaration furnished by the payee under section 197A, and it incorporates the provisions of existing section 272A(2)(ba); |
| s. 272A(2)(g) | deals with failure to furnish tax deduction certificate as required under section 203, and it incorporates the provisions of existing section 272A(2)(c); |
| s. 272A(2)(h) | deals with failure of the employer to comply with the garnishee notice issued under section 226(2), and it incorporates the provisions of existing section 272A(2)(d). |

Authorities, competent to impose penalty, specified.—New section 272A(3) is on the lines of existing section 272A(3), and it specifies the authorities by whom penalties under sections 272A(1) and 272A(2) may be imposed.

Opportunity of being heard to be given.—New section 272A(4) provides for granting hearing before imposition of any penalty under section 272A, and it incorporates the provisions of existing section 272A(4).

Page 4962: section 272B:

Omission of section 272B.—By section 111 of the DTL(A) Act, 1987, section 272B, relating to penalty for failure to apply for allotment of permanent account number, has been omitted, w.e.f. 1-4-1989, as such provisions have been incorporated in the newly substituted section 272A-(1)(d), w.e.f. 1-4-1989.

Pages 4963-4967: section 273:

Amendment of section 273.—By section 112 of the DTL(A) Act, 1987, in section 273, after sub-section (2), the following sub-section (3) has been inserted, w.e.f. 1-4-1989, namely:—

“(3) The provisions of this section shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.”.

ANNOTATIONS

Section 273 operative only upto assessment year 1988-89.—As a result of the insertion (w.e.f. 1-4-1989) of section 273(3), the applicability of the provisions of section 273, relating to penalty for furnishing of false estimate of, or failure to pay, advance tax, has been restrained upto and including the assessment year 1988-89.

It may be noted that, for and from assessment year 1989-90, mandatory interest is to be charged under new section 234B for non-payment or short-payment of advance tax.

Pages 4990-4993: section 273A:

Amendment of section 273A.—By section 113 of the DTL(A) Act, 1987, in section 273A, after sub-section (5), the following sub-section (6) has been inserted, w.e.f. 1-4-1989, namely:—

“(6) The provisions of this section shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.”.

ANNOTATIONS

Section 273A operative only upto assessment year 1988-89.—As a result of insertion (w.e.f. 1-4-1989) of section 273A(6), the applicability of the provisions of section 273A, relating to power of the Commissioner to reduce or waive penalty, etc., has been restrained upto and including assessment year 1988-89. This is consequential to the amendments of sections 139, 215, 217, 271 and 273.

Page 5011: section 273B:

Amendment of section 273B.—By section 114 of the DTL(A) Act, 1987, in section 273B, for the words, figures, brackets and letters “section 270, clause (a) or clause (b) of sub-section (1) of section 271, section 271A, section 271B, sub-section (2) of section 272A, sub-section (1) of section 272AA, sub-section (1) of section 272B”, the words, figures, letters and brackets “section 271, section 271A, section 271B, section 271C, section 271D, section 271E, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA” have been substituted, w.e.f. 1-4-1989.

ANNOTATIONS

Section 273B amended.—The amendment of section 273B, which lays down that certain penalties are not to be imposed on proof by the assessee of the existence of reasonable cause for the defaults, is consequential to the omission of sections 270 and 272B, substitution of sections 271 and 272A, and insertion of new sections 271C, 271D and 271E.

Pages 5011-5012: section 274:

Amendment of section 274.—By section 115 of the DTL(A) Act, 1987, section 274 has been amended, w.e.f. 1-4-1989, as under:—

‘(a) after sub-section (1), the following sub-section (2) has been inserted, namely:—

“(2) No order imposing a penalty under this Chapter shall be made—

(a) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(b) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees,

except with the prior approval of the Deputy Commissioner.”;

(b) for sub-section (3), the following sub-section (3) has been substituted, namely:—

“(3) An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.”.

ANNOTATIONS

Insertion of a new section 274(2).—The newly inserted (w.e.f. 1-4-1989), section 274(2) secures that where the Income-tax Officer or the Assistant Commissioner imposes penalty exceeding rupees ten thousand or twenty thousand, respectively, he must obtain the previous approval of the Deputy Commissioner.

Substituted section 274(3).—The newly substituted (w.e.f. 1-4-1989) section 274(3) secures that an income-tax authority, unless he himself is the Assessing Officer, has to send a copy of the penalty order to the Assessing Officer.

Pages 5026-5027: section 275:

Amendment of section 275.—By section 116 of the DTL(A) Act, 1987, in section 275, for clauses (a) and (b) excluding the *Explanation*, the following clauses (a), (b) and (c) have been substituted, w.e.f. 1-4-1989, namely:—

- “(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;
- (b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;
- (c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.”.

ANNOTATIONS

Section 275 amended.—Under the existing provisions of section 275 (operative upto 31-3-1989), any order imposing penalty under Chapter XXI must be passed within two years from the end of the financial year in

which the assessment order was passed or within six months from the end of the month in which the order of appellate authority is received by the Commissioner, whichever period expires later.

New section 275(a) restricts the limitation period by providing that the order imposing penalty must be passed before the expiry of the financial year in which the proceedings, which gave rise to penalty proceedings, are completed, or within six months from the end of the month in which the order of the first appellate authority is received by the Chief Commissioner or Commissioner, whichever period expires later.

New section 275(b) extends the limitation specified in section 275(a) where the assessment order, etc., is the subject-matter of revision by the Chief Commissioner or Commissioner under section 263. In such a case, the limitation for passing penalty order is extended by six months from the end of the month in which the revisional order is passed.

New section 275(c) incorporates the provisions of the existing section 275(b). However, the limitation for passing penalty order where no appeal is filed is reduced from two years from the end of the financial year to the end of the financial year itself in which assessment order, etc., is passed or six months from the end of the month in which penalty proceedings were initiated, whichever is later.

Page 5039: new section 276:

Insertion of new section 276.—By section 117 of the DTL(A) Act, 1987, after section 275A, the following section 276 has been inserted, w.e.f. 1-4-1989, namely:—

“276. Removal, concealment, transfer or delivery of property to thwart tax recovery.—Whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.”.

ANNOTATIONS

New section 276 inserted.—The newly inserted (w.e.f. 1-4-1989) section 276 makes fraudulent removal and transfer, etc., of property by any person to thwart tax recovery, a punishable offence. The punishment specified is rigorous imprisonment extending to two years in addition to fine.

It may be noted that the new section 276 incorporates the provisions of rule 89 of the Second Schedule in a modified form.

Pages 5042-5043: section 276B:

Substitution of new section for section 276B.—By section 118 of the

DTL(A) Act, 1987, the following section 276B has been substituted, w.e.f. 1-4-1989, namely:—

"276B. Failure to pay the tax deducted at source.—If a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."

ANNOTATIONS

Section 276B substituted.—New section 276B has been substituted for the existing section 276B, which deals with prosecution for the offence of failure to deduct or pay tax under section 80E(9) or Chapter XVII-B of the Act.

Under the existing provisions of section 276B (operative upto 31-3-1989), the failure to deduct tax at source and also the failure to deposit tax so deducted is a punishable offence. The substituted section 276B excludes the failure to deduct tax under section 80E or Chapter XVII-B from the purview of the section as section 80E has been omitted and the failure to deduct tax under Chapter XVII-B is liable to the levy of penalty under the new section 271C. New section 276B (w.e.f. 1-4-1989) covers only cases where tax deducted under the provisions of Chapter XVII-B is not paid to the credit of the Central Government. The punishment for the offence has been made uniform by specifying rigorous imprisonment for at least three months extending to seven years and with fine. Accordingly, the existing provisions, which provide for different terms of imprisonment for the two categories of offenders depending on whether or not the tax involved is above one hundred thousand rupees, are omitted.

Pages 5052-5053: section 276CC:

Amendment of section 276CC.—By section 126(24) of the DTL(A) Act, 1987, in section 276CC, for the words, brackets and figures "sub-section (2) of section 139", the words, brackets and figures "clause (i) of sub-section (1) of section 142" have been substituted, w.e.f. 1-4-1989. This amendment is consequential to the amendments made, by that Act, in sections 139 and 142, w.e.f. 1-4-1989.

Pages 5057 and 5058: sections 276DD and 276E:

Omission of sections 276DD and 276E.—By section 119 of the DTL(A) Act, 1987, sections 276DD and 276E, relating to prosecutions for contraventions of the provisions of sections 269SS and 269T, respectively, have been omitted, w.e.f. 1-4-1989.

It may be noted that newly inserted (w.e.f. 1-4-1989) section 271D makes provisions for levy of penalty for failure to comply with the provisions of section 269SS. Similarly, the newly inserted (w.e.f. 1-4-1989) section 271E makes provisions for levy of penalty for failure to comply with the provisions of section 269T.

Page 5070: section 278AA:

Amendment of section 278AA.—By section 120 of the DTL(A) Act, 1987, in section 278AA, for the words, figures and letters “section 276B, section 276DD or section 276E,” the words, figures and letter “or section 276B,” have been substituted, w.e.f. 1-4-1989. This amendment is consequent upon the omission of sections 276DD and 276E.

Pages 5077-5078: section 279:

Amendment of section 279.—By section 126(25) of the DTL(A) Act, 1987, in section 279, in sub-section (3), for the words, brackets and letters “clauses (a), (b), (c), (d) and (e)”, the words, brackets and letters “clauses (a) to (g)” have been substituted, w.e.f. 1-4-1988. This amendment is consequential to the substitution, by that Act, of section 116, relating to enumeration of income-tax authorities.

Page 5256: section 288(4)(b):

Amendment of section 288(4)(b).—By section 126(26) of the DTL(A) Act, 1987, in section 288, in sub-section (4), in clause (b), the words, brackets and figures “clauses (i) and (ii) of sub-section (1) of” have been omitted, w.e.f. 1-4-1989. The omission is consequential to the substitution, by that Act, of a new section 271, w.e.f. 1-4-1989.

Page 5297: new section 293B:

Insertion of new section 293B.—By section 121 of the DTL(A) Act, 1987, after section 293A, the following section 293B has been inserted, w.e.f. 1-4-1989, namely:—

“293B. Power of Central Government or Board to condone delays in obtaining approval.—Where, under any provision of this Act, the approval of the Central Government or the Board is required to be obtained before a specified date, it shall be open to the Central Government or, as the case may be, the Board to condone, for sufficient cause, any delay in obtaining such approval.”

ANNOTATIONS

Condonation of delay in obtaining approval possible.—The newly inserted (w.e.f. 1-4-1989) section 293B empowers the Central Government or the Board to condone, for sufficient cause, any delay where their approval could not be obtained within the specified time.

Page 5332: section 296:

Substitution of new section for section 296.—By section 122 of the DTL (A) Act, 1987, the following section 296 has been substituted, w.e.f. 1-4-1989, namely:—

“296. Rules to be laid before Parliament.—The Central Government shall cause every rule made under this Act to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

The substitution has been necessitated consequent upon the omission, by that Act, of section 10(23C)(iv).

Page 5359: section 298:

Amendment of section 298.—By section 123 of the DTL(A) Act, 1987, in section 298, after sub-section (2), the following sub-sections (3) and (4) have been added, w.e.f. 1-4-1988, namely:—

“(3) If any difficulty arises in giving effect to the provisions of this Act as amended by the Direct Tax Laws (Amendment) Act, 1987, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiration of three years from the 1st day of April, 1988.

(4) Every order made under sub-section (3) shall be laid before each House of Parliament.”.

ANNOTATIONS

Power to remove difficulties.—The newly inserted (w.e.f. 1-4-1988) section 298(3) empowers the Central Government to remove any difficulty that may arise in giving effect to the provisions of the Act, as amended by the Direct Tax Laws (Amendment) Act, 1987, by order, which is not to be inconsistent with such provisions and which is to be made before the 1st day of April, 1991.

Laying before Parliament.—The newly inserted (w.e.f. 1-4-1988) section 298(4) makes it mandatory that every order made under section 298(3) is to be laid before each House of Parliament.

Page 5366: Sch. I, rule 5:

Amendment of the First Schedule, rule 5.—By section 126(27) of the DTL(A) Act, 1987, in the First Schedule, in rule 5, in clause (a), for the words, figures and letter “sections 30 to 43A”, the words, figures and letter “sections 30 to 43B” have been substituted, w.e.f. 1-4-1989. The substitution is consequent upon the existence of section 43B in relation to computation of business income.

Pages 5369-5391: Sch. II:

Amendment of the Second Schedule.—By section 124 of the DTL(A) Act, 1987, the Second Schedule has been amended, w.e.f. 1-4-1989, as under:—

‘(1) for the words and figures “See section 222” occurring under the heading, the words and figures “See sections 222 and 276” have been substituted;

(2) in rule 1, for clause (a), the following clause (a) has been substituted, namely:—

‘(a) “certificate”, except in rules 7, 44, 65 and sub-rule (2) of rule 66, means the certificate drawn up by the Tax Recovery Officer under section 222 in respect of any assessee referred to in that section;’;

(3) in rule 2, for the words “When a certificate has been received by the Tax Recovery Officer from the Income-tax Officer”, the words “When a certificate has been drawn up by the Tax Recovery Officer” have been substituted;

(4) for rule 8, the following rule (8) has been substituted, namely:—

“8. Disposal of proceeds of execution.—(1) Whenever assets are realised by sale or otherwise in execution of a certificate, the proceeds shall be disposed of in the following manner, namely:—

(a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;

(b) if there remains a balance after the adjustment referred to in clause (a), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; and

(c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (b) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.”;

(5) in rule 9,—

(i) for the words “Income-tax Officer”, the words “Tax Recovery Officer” have been substituted;

(ii) the words “duly filed under this Act” have been omitted.

(6) in rule 14, for the words “Income-tax Officer”, the words “Tax Recovery Officer” have been substituted;

(7) for rule 19A, the following rule 19A has been substituted, namely:—

“19A. Entrustment of certain functions by Tax Recovery Officer.—A Tax Recovery Officer may, with the previous approval of the Deputy Commissioner, entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer.”;

(8) in rule 25, in sub-rule (1), for the words “and the Income-tax Officer shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangements”, the words “and he shall have power to defray the cost of such arrangements” have been substituted;

(9) in rule 27, for the words “Income-tax Officer” wherever they occur, the words “Tax Recovery Officer” have been substituted;

(10) in rule 31, for the words “Income-tax Officer” occurring in the proviso, the words “Tax Recovery Officer” have been substituted;

(11) in rule 47, for the words “direct that such coins or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the Income-tax Officer”, the words and figure “direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in rule 8” have been substituted;

(12) in rule 59, after sub-rule (2), the following sub-rule (3) has been inserted, namely:—

“(3) Where the Income-tax Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.”;

(13) in rule 60, in sub-rule (1), in clause (a), the words “for payment to the Income-tax Officer” have been omitted;

(14) in rule 61, for the words “Income-tax Officer”, the words “such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf” have been substituted;

(15) in rule 73, in sub-rule (1), in clauses (a) and (b), for the words “the receipt of the certificate in the office of the Tax Recovery Officer”, the words “the drawing up of the certificate by the Tax Recovery Officer” have been substituted;

(16) in rule 74, for the words “the Tax Recovery Officer shall proceed to hear the Income-tax Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter”, the words “the Tax Recovery Officer shall give the defaulter” have been substituted;

(17) in rule 77, in sub-rule (1),—

(a) for clause (ii) of the proviso, the following clause (ii) has been substituted, namely:—

“(ii) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.”;

(b) the second proviso has been omitted;

(18) in rules 82, 83 and 87, for the words "Tax Recovery Commissioner", the words "Chief Commissioner or Commissioner" have been substituted;

(19) in rule 85, for the words "If at any time after the issue of the certificate by the Income-tax Officer to the Tax Recovery Officer", the words "If at any time after the certificate is drawn up by the Tax Recovery Officer" have been substituted;

(20) in rule 86,—

(a) for sub-rule (1), the following sub-rule (1) has been substituted, namely:—

"(1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Chief Commissioner or Commissioner.";

(b) for sub-rule (4), the following sub-rule (4) has been substituted, namely:—

"(4) Notwithstanding anything contained in sub-rule (1), where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area, which is included in that area, shall lie to such Chief Commissioner or Commissioner.";

(21) rule 89 has been omitted;

(22) in rule 90, in sub-rule (1), for the words "Income-tax Officer", the words "Tax Recovery Officer" have been substituted;

(23) in rule 92, for the words "Tax Recovery Commissioners", in two places where they occur, the words "Chief Commissioners, Commissioners" have been substituted;

(24) after rule 93, the following rule 94 has been inserted, namely:—

"94. Continuance of certain pending proceedings and power to remove difficulties.—All proceedings for the recovery of tax pending immediately before the coming into force of the amendments to this Schedule by the Direct Tax Laws (Amendment) Act, 1987, shall be continued under this Schedule as amended by that Act from the stage they had reached, and, for this purpose, every certificate, issued by the Income-tax Officer under section 222 before such amendment shall be deemed to be a certificate drawn up by the Tax Recovery Officer under that section after such amendment, and, if any difficulty arises in continuing the said proceedings, the Board may issue (whether by way of modification, not affecting the substance, of any rule in this Schedule or otherwise) general or special orders which appear to it to be necessary or expedient for the purpose of removing the difficulty.".

ANNOTATIONS

Sch. II amended.—The Second Schedule to the 1961 Act, which deals with the procedure for recovery of tax, has been amended in several respects, w.e.f. 1-4-1989.

Heading substituted.—In the heading of the Second Schedule, for the words and figures “see section 222”, the words and figures “see sections 222 and 276” have been substituted consequent upon the insertion of a new section 276 which makes provisions for prosecution for fraudulent removal, concealment, transfer or delivery of property to thwart the recovery proceedings hitherto provided in rule 89 of the Second Schedule which stands omitted.

Rule 1(a) substituted.—The substitution of rule 1(a) is consequent upon the amendment of section 222. That rule defines the expression “certificate” so as to mean as the certificate drawn up by the Tax Recovery Officer under section 222 in respect of any assessee referred to in that section. However, this definition is not to apply to this expression appearing in rules 7, 44, 65 and rule 66(2).

Rule 2 amended.—The amendment of rule 2 is consequent upon the amendment of section 222.

Rule 8 substituted.—The new rule 8(1) lays down the following order in which the proceeds of assets realised by sale or otherwise in execution of a certificate are to be appropriated:—

(a) the amount due under the certificate and the cost incurred in the course of such execution;

(b) any other amount recoverable from the assessee under this Act.

The balance after the adjustment under clauses (a) and (b) is to be refunded to the defaulter. This is the present order also. Only the procedure is simplified.

The new rule 8(2) provides that if the defaulter disputes any adjustment under rule 8(1)(b), the Tax Recovery Officer is to determine the disputes as at present.

Rule 9 amended.—One of the amendments substitutes the words “Tax Recovery Officer” for the words “Income-tax Officer”. The other amendment is of a consequential nature.

Rule 14 amended.—The amendment substitutes the words “Tax Recovery Officer” for the words “Income-tax Officer”.

Rule 19A substituted.—The newly substituted rule 19A provides that a Tax Recovery Officer may, with the previous approval of Deputy Commissioner, entrust any of his functions as Tax Recovery Officer to any other officer lower than him in rank not below the rank of an Inspector of Income-tax. It also provides that such officer shall be deemed to be a “Tax Re-

covery Officer" in relation to functions so entrusted to him. References to officers of the State Governments have been deleted.

Rule 25(1) amended.—Under the amended rule 25(1), the Tax Recovery Officer has been empowered to defray the cost of arrangements for custody, etc., of the attached agricultural produce.

Rule 27 amended.—The amendment substitutes the words "Tax Recovery Officer" for the words "Income-tax Officer", wherever they occur.

Proviso to rule 31 amended.—The amendment substitutes the words "Tax Recovery Officer" for the words "Income-tax Officer".

Rule 47 amended.—The amended rule 47 empowers the Tax Recovery Officer to direct that the attached coins or notes be credited to the Central Government.

Rule 59(3) inserted.—The newly inserted rule 59(3) provides that where the Income-tax Officer referred to in rule 59(1) is declared to be the purchaser at any subsequent sale, he shall not have to deposit 25 per cent. of the amount of purchase money to the Officer conducting the sale as provided under rule 57 of the Schedule. It also provides that the amount of the purchase price shall be adjusted towards the amount specified in the certificate.

Rule 60(1)(a) amended.—As a result of amendment of rule 60(1)(a), the requirement of making payment to the Income-tax Officer of the deposit made by the applicant praying for setting aside a sale of immovable property, has been dispensed with.

Rule 61 amended.—As a result of amendment of rule 61, any authorised Income-tax Officer has also been enabled to apply for the setting aside the sale of immovable property under that rule.

Rule 73(1) amended.—The amendment is consequential to the amendment of section 222.

Rule 74 amended.—The omission of the requirement of hearing the Income-tax Officer before giving the defaulter opportunity of showing cause why he should not be committed to civil prison is consequential upon the introduction of a new scheme whereunder the Tax Recovery Officer can act *suo motu* under the exclusive jurisdiction vested in him.

Rule 77 amended.—The amendments to this rule are of consequential nature.

Rules 82, 83 and 87 amended.—The amendments in these rules by substituting the words "Chief Commissioner or Commissioner" for the words "Tax Recovery Commissioner" are consequent upon the abolition of the post of the Tax Recovery Commissioner.

Rule 85 amended.—The amendment of this rule is consequential to the amendment of section 222.

Rule 86 amended.—The substituted rule 86(1) provides that an appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, is to lie to the Chief Commissioner or Commissioner.

The substituted rule 86(4) provides that notwithstanding anything contained in rule 86(1), where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the order passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise power as such in respect of that area, or an area which is included in that area, are to lie to such Chief Commissioner or Commissioner.

The above amendments are consequent upon amendment in the recovery procedure and abolition of the post of the Tax Recovery Commissioner.

Omission of rule 89.—The omission of rule 89 is consequential to the insertion of new section 276.

Rule 90(1) amended.—The amendment substitutes the words "Tax Recovery Officer" for the words "Income-tax Officer"

Rule 92 amended.—The amendment of rule 92 by substituting the words "Chief Commissioners, Commissioners" for the words "Tax Recovery Commissioners", in two places where they occur, is consequent upon the abolition of the post of the Tax Recovery Commissioner.

Rule 94 inserted.—The new rule 94 provides for continuance of all pending recovery proceedings under the Second Schedule before coming into force of the amendments to the Second Schedule by the Direct Tax Laws (Amendment) Act, 1987, from the stage they had reached. It also provides that every certificate issued by the Income-tax Officer under section 222 before such amendment is to be deemed to be a certificate drawn up by the Tax Recovery Officer under that section after such amendment.

That rule further enables the Board to remove difficulties by issue of general or special orders provided such orders do not affect the substance of any rule.

Page 5392: Sch. III:

Amendment of the Third Schedule.—By section 126(28) of the DTL(A) Act, 1987, in the Third Schedule for the words "Income-tax Officer", the words "Assessing Officer or Tax Recovery Officer" have been substituted, w.e.f. 1-4-1989. The amendment is of a consequential nature.

Page 5413: Sch. X:

Insertion of Tenth Schedule.—By section 125 of the DTL(A) Act, 1987, after the Ninth Schedule, the following Tenth Schedule has been inserted, w.e.f. 1-4-1989, namely:—

'THE TENTH SCHEDULE

/ [See section 3(5)]

MODIFICATIONS SUBJECT TO WHICH THE PROVISIONS OF THIS ACT SHALL APPLY IN CASES WHERE THE PREVIOUS YEAR IN RELATION TO THE ASSESSMENT YEAR COMMENCING ON THE 1ST APRIL, 1989, REFERRED TO IN SECTION 3(2) EXCEEDS TWELVE MONTHS

1. Definition.—In this Schedule, “transitional previous year” means the period reckoned as the previous year for the assessment year commencing on the 1st day of April, 1989, in the manner specified in sub-section (2) of section 3 and, in a case where the proviso to that sub-section applies, the longer or, as the case may be, the longest of the periods reckoned in the manner laid down in the said proviso.

2. Special provisions in a case where the transitional previous year is longer than twelve months.—In a case where the transitional previous year is longer than twelve months, the provisions of this Act and the Finance Act of the relevant year shall apply subject to the modifications specified in rules 3, 4, 5 and 6 of this Schedule.

3. Modifications pertaining to monetary limits, etc.—The provisions of this Act specified in column (1) of the Table below shall be subject to the modification that the reference therein to the amount or amounts specified in the corresponding entry in column (2) of the said Table, shall be construed as a reference to the said amount or amounts as increased by multiplying each such amount by a fraction of which the numerator is the number of months in the transitional previous year and the denominator is twelve:

Provided that for the purposes of this rule and rules 5 and 6, where the transitional previous year includes a part of a month, then, if such part is fifteen days or more, it shall be increased to one complete month and if such part is less than fifteen days it shall be ignored.

TABLE

| Provision of the Act | Amount |
|-------------------------------|-------------------------------|
| (1) | (2) |
| | Rs. |
| Section 10(3) | 5,000 |
| Section 16 | 10,000 |
| Section 24(1) (ii) | 8,600 |
| Section 37(2A) | 10,000 |
| Section 44AA(2) (i) and (iii) | 25,000 and 2,50,000 |
| Section 44AB | 40,00,000 and 10,00,000 |
| Section 48(2) | 10,000 |
| Section 80C(1) | 6,000, 9,000 and 12,000 |

| (1) | (2) |
|-----------------------------|------------------------------|
| Section 80C(2) (d) | 10,000 |
| Section 80C(4) | 60,000 and 40,000 |
| Section 80F(2) (b) | 50,000 |
| Section 80L(1) | 7,000 |
| | (occurring in two places) |
| Section 80L(1), 1st proviso | 3,000 |
| Section 80L(1), 2nd proviso | 2,000 |
| Section 80U | 15,000 |
| Section 139A | 50,000 |

4. Modification in section 6.—Where the transitional previous year comprises a period of eighteen months or more, then, sub-section (1) of section 6 shall be subject to the modification that references therein to the periods of one hundred and eighty-two days and ninety days shall be construed as references, respectively, to the periods of two hundred and seventy-three days and one hundred and thirty-five days.

5. Modification in respect of depreciation allowance.—Where the assessee's income under the head "Profits and gains of business or profession" for a period of thirteen months or more is included in his total income for the transitional previous year, the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of buildings, machinery, plant or furniture calculated in the manner stated therein, shall be increased by multiplying it by a fraction of which the numerator is the number of months in the transitional previous year and the denominator is twelve.

6. Modification in respect of rate of tax.—The tax chargeable on the total income of the transitional previous year shall be calculated at the average rate of tax on the amount obtained by multiplying such total income by a fraction of which the numerator is twelve and the denominator is the number of months in the transitional previous year, as if the resultant amount were the total income.

7. Power of Board to grant relief in case of hardship.—The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship, by general or special order, grant appropriate relief in any case or class of cases where the transitional previous year is longer than twelve months.

CHATURVEDI & PITHISARIA'S

INCOME TAX LAW

VOL. 7

[Being in the nature of a supplement to Vols. 1 to 6 of the main treatise,
Third Edition.]

[Page references in bold type headings along with section
reference indicate the respective pages of Vols. 1 to 6,
where the particular subject has been dealt with.]

VOLUME 1

Pages 2-4: section 1:

In the List of Amending Legislations, for serial No. 50, the following
may be substituted:—

50. The Income-tax (Second Amendment) Act, 1981 (38 of 1981)
[132 ITR (St.) 31, preceded by Ordinance No. 8 of 1981, promul-
gated on July 11, 1981, 130 ITR (St.) 25].
51. The Finance Act, 1982 (14 of 1982) [135 ITR (St.) 25].
52. The Finance Act, 1983 (11 of 1983) [142 ITR (St.) 13].
53. The Finance Act, 1984 (21 of 1984) [147 ITR (St.) 35].
54. The Taxation Laws (Amendment) Act, 1984 (67 of 1984) [149
ITR (St.) 97].
55. The Finance Act, 1985 (32 of 1985) [153 ITR (St.) 21].
56. The Finance Act, 1986 (23 of 1986) [159 ITR (St.) 17].
57. The Income-tax (Amendment) Act, 1986 (26 of 1986) [160 ITR
(St.) 1].
58. The Taxation Laws (Amendment and Miscellaneous Provisions) Act,
1986 (46 of 1986) [161 ITR (St.) 111].
59. The Finance Act, 1987 (11 of 1987) [166 ITR (St.) 1].

Pages 4-5: section 1:

**Act extended to the Exclusive Economic Zone of India and the Con-
tinental Shelf of India.**—The following notification has been issued for the
purpose:

Extension† of the Income-tax Act, 1961, to the Continental shelf of India.—In exercise of the powers conferred by clause (a) of sub-section (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the Income-tax Act, 1961 (43 of 1961), to the continental shelf of India and the exclusive economic zone of India with effect from the 1st day of April, 1983, subject to the restriction and modification that the said Act shall apply only in respect of income derived by every person from all or any of the following activities, namely:—

- (a) the prospecting for or extraction or production of mineral oils in the continental shelf of India or the exclusive economic zone of India;
- (b) the provision of any services or facilities or supply of any ship, aircraft, machinery or plant (whether by way of sale or hire) in connection with any activities referred to in clause (a);
- (c) the rendering of services as an employee of any person engaged in any of the activities referred to in clause (a) or clause (b).

Explanation.—For the purpose of this notification, “mineral oil” includes petroleum and natural gas. [Notification No. G.S.R. 304(E), dated March 31, 1983.]

Notification No. GSR 306(E), dated 31st March, 1983, issued under section 293A, has been extracted at pages 5296-97 of Vol. 6.

Page 22: section 2:

In line 4 from top, after “389 (QB)”, *add*,—“; *CGT v Gopiji Laxmichand*, (1984) 43 CTR (MP) 143, 146; *Patil Vijaykumar v Union of India*, (1985) 151 ITR 48 (Karn)” [on the subject “*Natural meaning of an expression may be extended by coining a definition*”].

In line 14 from top, after “AIR 1971 Raj 151, 154”, *add*,—“; *Western India Match Co. Ltd. v Dy. Collector*, AIR 1981 Pat 309, 314 (FB); *CIT v J. K. Cotton Spng. & Wvg. Mills Co. Ltd.*, (1987) 164 ITR 18 (All)” [on the subject “*Effect of the presence of a definition*”].

Page 23: section 2:

In line 4 from top, after “605-6 (SC)”, *add*,—“; *Reserve Bank of India v Peerless General Finance & Investment Co. Ltd.*, (1987) 61 Comp Cas 663, 692 (SC); *CGT v Gopiji Laxmichand*, (1984) 43 CTR (MP) 143, 146” [on the subject “*Context and collocation also to influence the interpretation of a defined word*”].

† Reference may also be made to paragraphs 11.8 to 11.5 of departmental circular No. 308, dated 29th June, 1981, reproduced at pages 1066-68 of Vol. 1 of Authors’ “*Income-tax Companion*”.

Lines 14-15 from the bottom: The decision in *Narasingha Kar & Co. v CIT*, (1977) Tax LR 28 (Ori) has also been reported at (1978) 113 ITR 712 (Ori). Also see, *Patil Vijaykumar v Union of India*, (1985) 151 ITR 48, 62 (Karn) [on the subject "*Definition when exhaustive and when enumerative*"].

Page 24: section 2:

After line 18 from top, *add*,—

"Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive [*Reserve Bank of India v Peerless General Finance & Investment Co. Ltd.*, (1987) 61 Comp Cas 663, 691 (SC)].".

Pages 24-25: section 2:

At the end of paragraph titled "*Namely*" and "*including*"—*implication of*, *add*,—"Also see, *Ajanta Electricals v Collector*, (1982) Tax LR 2815, 2817 (Punj); *Goeffrey Manners & Co. Ltd. v Dy. C. C. T.*, (1987) Tax LR 2067, 2071 (AP—FB).".

Page 25: section 2:

At the end of paragraph titled "*That is to say*" in a definition clause—*implication of*, *add*,—"Also see, *Union of India v Bombay Tyre International Ltd.*, (1983) 15 Taxman 29, 45 (SC); *CST v Steel Engineering Corporation*, (1981) 48 STC 432 (All); *Ajanta Electricals v Collector*, (1982) Tax LR 2815, 2817 (Punj); *Rajasthan Iron and Steel Merchants Association (Pr.) Ltd. v CTO*, (1987) Tax LR 2118 (Raj).".

Pages 25-26: section 2:

At the end of paragraph titled "*Undefined common words of everyday use carry their popular meaning*", *add*,—"Also see, *CIT v Nirlon Synthetic Fibres and Chemicals Ltd.*, (1981) 130 ITR 14, 17 (SC); *CIT v Mahindra & Mahindra Ltd.*, (1983) 144 ITR 225, 240 (SC); *Annapurna Biscuit Mfg. Co. v CST*, (1981) Tax LR 3055, 3056 (SC); *Indian Aluminium Cables Ltd. v Union of India*, (1985) Tax LR 2551, 2555 (SC); *CIT v Stanton & Stavely (Overseas) Ltd.*, (1984) 146 ITR 405 (Cal); *CIT v Prasad Process Pr. Ltd.*, (1983) 141 ITR 9, 13 (Mad); *G. A. Renderian Ltd. v CIT*, (1984) 145 ITR 387, 399 (Cal); *Allied Auto Agencies v State of Andhra Pradesh*, (1983) Tax LR (NOC) 163 (AP). .

Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than their narrow, legal or technical sense. *Loquitur ut vulgus*, that is, according to the common

understanding and acceptance of the terms, is the doctrine that should be applied in construing the words used in statutes dealing with matters relating to the public in general. [*P. Alikunju, M. A. Nazeer Cashew Industries v CIT*, (1987) 166 ITR 804 (Ker)].”.

Page 26: section 2:

After the first paragraph, *add*,—

“**Dictionary meaning, value of.**—The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there is no such definition or interpretation, the Court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word, and the court has, therefore, to select the particular meaning which is relevant to the context in which it has to interpret that word [*State of Orissa v Titaghur Paper Mills Co. Ltd.*, (1985) Tax LR 2948, 2984, 3006 (SC)].”.

At the end of paragraph titled “*Context to affect the implication of even an undefined word*”, *add*,—“Also see, *CIT v G. B. Transports*, (1985) 155 ITR 548 (Ker—FB).”.

At the end of the page, *add*,—

“**Words to be given sensible meaning.**—The words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat** [*CIT v Jayashree Charity Trust*, (1986) 159 ITR 280, 284 (Cal)].”.

Page 27: section 2:

After the first paragraph, *add*,—

“The definitions given for the words in one statute cannot automatically be imported for interpreting the same words in another statute. A word used in a statute must take colour from the objects of the Act and it cannot be taken to have a uniform meaning in whatever statute it occurs [*CIT v Buhari Sons Pr. Ltd.*, (1983) 144 ITR 12, 16 (Mad), *relying on D. N. Banerji v P. R. Mukherjee*, AIR 1953 SC 58 and *S. Mohan Lal v R. Kondiah*, AIR 1979 SC 1132. Also see, *Mittal Ice and Cold Storage v CIT*, (1986) 159 ITR 18 (MP); *CIT v Vasan Publications Pr. Ltd.*, (1986) 159 ITR 381 (Mad)].”.

Page 28: section 2:

After 5th line from top, *add*,—

“When certain words have become words of well-recognised legal import, they have to be understood as such when found introduced in any statute,

*This maxim literally means “that the thing may rather have effect than be destroyed”.

unless they are defined otherwise or are stated in a different context [*New Bank of India Ltd. v Union of India*, (1981) 51 Comp Cas 375 (Del)].”.

Pages 31-32: section 2(1):

At the end of paragraph titled “*Power of States to amend definition of agricultural income*”, add,—“Also see, *High Land Produces Co. Ltd. v IAC Ag. IT*, (1984) 148 ITR 746 (Ker).”.

Page 33: section 2(1):

At the end of paragraph titled “*Requirements of s. 2(1)(a)*”, add,—“Also see, *Badrilal Bholaram v CIT*, (1982) 135 ITR 216, 220 (MP); *Badrilal Bholaram v CIT*, (1983) 139 ITR 207, 213 (MP); *R. V. R. Nallasivam v C Ag IT*, (1982) 133 ITR 184, 189 (Mad), special leave petition dismissed by the Supreme Court: (1985) 151 ITR (St.) 12.”.

Page 37: section 2(1):

At the end of the paragraphs titled “*Income from lease*”, add,—
“The decision in *Kameshwar Singh’s* case [(1959) 37 ITR 388 (SC)] has been followed in *Late Maharajadhiraj Dr. Sir Kameshwar Singh of Darbhanga v CIT* [(1987) 167 ITR 549 (Pat)].”.

Page 41: section 2(1):

After the 12th line from top referring to *Viswanatha Chettiar’s* case, add,—
“*A. N. Anthony Packia Nadar v C Ag IT*, (1982) 135 ITR 527 (Mad).”
[holding that income derived from sale of trees of spontaneous growth is not agricultural income].

Page 42: section 2(1):

After serial No. (16), add,—

“(17) *R. Lakshmansa & Co. v CIT*, (1981) 128 ITR 283 (Karn), special leave petition granted by the Supreme Court: (1985) 151 ITR (St.) 15 [Feeding of mulberry leaves to silk-worms, held not a process ordinarily employed by a cultivator, etc.]”.

Page 46: section 2(1):

At the end of the paragraph titled “*Compensation*”, add,—

“In the facts of *D. L. F. Housing & Construction Pr. Ltd. v CIT* [(1983) 141 ITR 806 (Del)], the compensation for compulsory acquisition of agricultural land was held not income or agricultural income.

Similarly, in the facts of *CIT v M. Ramaiah Reddy* [(1986) 158 ITR 611 (Karn)], compensation for compulsory acquisition of agricultural lands with trees thereon was held not to constitute agricultural income.”.

Lines 5-6 from the bottom (also line 2 from top of page 35): The decision in *CIT v Gauri Shankar Agarwal*, (1980) 19 CTR (All) 322 has also been reported at (1981) 131 ITR 27 (All). A special leave petition has

been dismissed thereagainst by the Supreme Court: (1983) 143 ITR (St.) 38.

Also, in the last line, for “(1946)”, read “(1945)”.

Page 48: section 2(1):

In line 9 of the paragraph titled “*Slaughter-tapping*”, after “90 ITR 496 (Ker)”, add,—“; *T. V. Sundaram v State of Karnataka*, (1986) Taxation 80(7)-20 (Karn)” [holding that sale proceeds of latex from slaughter-tapping of purchased trees was not agricultural income].

Page 49: section 2(1):

At the end of paragraph titled “*Other cases where income was held not to be agricultural income*”, add,—

“(6) *Sri Ranga Vilas Ginning & Oil Mills v CIT*, (1982) 133 ITR 85 (Mad) [Receipts from supply of water from a water tank].

(7) *Badrilal Bholaram v CIT*, (1982) 135 ITR 216 (MP) and *Badrilal Bholaram v CIT*, (1983) 139 ITR 207 (MP) [Agricultural land purchased by a firm carrying on business as a contractor and of developing land and thereafter selling in lots, profit from such sale was held to be business income and not agricultural income].

(8) *Cochin Malabar Estates & Industries Ltd. v C Ag IT*, (1982) 135 ITR 536 (Ker) [Sale proceeds of plants grown in a nursery maintained as a capital asset].

(9) *CIT v M. Ramaiah Reddy*, (1986) 158 ITR 611 (Karn) [Excess realised on trees, etc., on account of acquisition of land].”.

Page 52: section 2(1):

At the end of paragraph titled “*Processed tea held still to be ‘agricultural produce’*”, add,—

“The implication of the above Supreme Court case [44 STC 392] has been explained in the following departmental circular:—

“*Agricultural income—Manufacture and sale of tea—Whether agricultural produce—Section 2(1) of the Income-tax Act—Clarification regarding.*—Section 2(1) of the Income-tax Act, 1961, defines ‘agricultural income’, *inter alia*, to mean any rent or revenue derived from land which is situated in India and is used for agricultural purposes. Further, any income derived from such land by the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by him to render the produce raised or received by him fit to be taken to market is also agricultural income.

2. The Board’s attention has been drawn to the decision of the Supreme Court in *CST v D. S. Bist & Sons* [AIR 1980 SC 169 = (1979) 44 STC 392 (SC)]. The question before the Supreme Court turned on the interpretation of section 3 of the U. P. Sales Tax Act, 1948. The short facts of the case

were that the assessee owned some tea gardens in the State of U. P. The tea leaves grown by him in his garden were sold in the market after being processed and packed. It was contended on his behalf before the sales tax authorities that the tea leaves sold by him were agricultural produce grown by himself and, therefore, the sales were not exigible to sales tax. It was common ground that tea leaves had been put through the process of withering, crushing, roasting and fermentation before being packed and sold by the assessee. The Supreme Court held that the tea leaves did not cease to be an agricultural produce merely because of the performance by the assessee of the processes outlined above.

3. Reference has been received in this connection on the effect of the decision on rule 8* of the Income-tax Rules, 1962, under which income derived from sale of tea grown and manufactured by the seller in India is to be computed as if it was income derived from business and 40 per cent. of such income to be deemed as income liable to income-tax.

4. The Board have been advised that the Supreme Court's decision in this case deals only with the question whether tea manufactured and sold is 'agricultural produce' for the purposes of the law relating to sales tax in force in U.P. This case has no bearing on the question as to what constitutes agricultural income or upon the power of Parliament to levy income-tax on tea plantations and tea companies.

5. In this connection, it may be noted that the power of the State Legislature to levy agricultural income-tax is derived from entry 46 of List II of the Seventh Schedule to the Constitution which refers to 'Taxes on agricultural income'. The term 'agricultural income' has been defined in article 366(1) of the Constitution as meaning 'agricultural income defined for the purposes of the enactments relating to Indian income-tax'. The legislative competence of the State Legislature is thus restricted by the definition of 'agricultural income' and it is not open to the State Legislature to enlarge the definition of 'agricultural income' so as to bring within its scope what would not be agricultural income for the purposes of the Income-tax Act. This position has been recognised all along and is supported by the Supreme Court's ruling in *Karimtharuvi Tea Estates Ltd. v State of Kerala*, (1963) 48 ITR (SC) 83 and *Anglo-American Direct Tea Trading Co. Ltd. v C. Ag. IT*, (1968) 69 ITR 667. Both these decisions are authority for the proposition that what is 'agricultural income' in so far as tea estates are concerned had to be computed strictly in accordance with the scheme of the Income-tax Act. Rule 8 of the Income-tax Rules, 1962, makes 40 per cent. of the income derived from the sale of tea grown and manufactured by the seller in India liable to tax under the Income-tax Act. This is only on the basis that this is not agricultural income and it is only the balance of 60 per cent. which is agricultural income for the purpose

* Rule 8 has been extracted at page 50 of Vol. 1.

of the Income-tax Act and also for the purposes of entry 46 of the State List.

6. In view of the foregoing, the income from tea grown and sold in India will continue to be computed in terms of rule 8 of the Income-tax Rules, 1962.

7. These instructions may be brought to the notice of all officers working in your charge". [*Circular No. 310, dated 29th July, 1981.*].

Page 53: section 2(1):

In line 13 from top, for "476 (Bom)", read "478 (Bom)".

After line 26, *add*,—

"In *CIT v Ganesh Sugar Mills Ltd.* [(1986) 161 ITR 540 (Cal)], it has been held that disallowance out of transport charges incurred by the assessee in transporting its own agricultural produce from farm to factory should be limited to the difference between the prices fixed by the Government at the factory gate and at the out-centres."

Before the last paragraph, *add*,—

"In *CIT v Thiru Arooran Sugars Ltd.* [(1983) 144 ITR 4 (Mad)], it has been held that the sugarcane must be regarded as an agricultural produce ordinarily sold in the market in its raw state. It must fall under rule 7(2)(a). It excludes rule 7(2)(b) from application."

Page 54: section 2(1):

Before the paragraph titled "*Reasons for framing rule 7*", *add*,—

"In the facts of *Godavari Sugar Mills Ltd. v CIT* [(1978) 112 ITR 205 (Bom)], it was held that there was sufficient evidence on record to show that the cane rate in regard to the sugarcane used by the assessee-company from its own farms was lower than the average rate at which the assessee-company purchased sugarcane from outsiders in the market."

Page 54: section 2(1):

On the subject "*Agricultural Income-tax Officer bound by the Central Income-tax assessment*", reference may also be made to *Sri Sankaracharya Mutt v State of Tamil Nadu*, (1987) 63 CTR (Mad) 356 [holding that where a religious or charitable trust is granted exemption under the 1961 Act provisions for a particular year, then, no assessment is possible under the State Agricultural Income-tax Act.].

Page 54: section 2(1A):

Before line 7 from bottom, *add*,—

"In the facts of *Union of India v Ambalal Sarabhai Enterprises Ltd.* [(1984) 147 ITR 294 (Guj)], the scheme of amalgamation was sanctioned. Similarly, in the facts of *Jitendra R. Sukhadia v Alembic Chemical Works Co. Ltd.* [(1987) 33 Taxman 338 (Guj)], the order passed by the learned company judge sanctioning the scheme of amalgamation has been upheld by the Division Bench. Such scheme of amalgamation becomes effective from

the date mentioned in that behalf in the order passed by the court [*CIT v Swastik Rubber Products Ltd.*, (1983) 140 ITR 304 (Bom), special leave petition dismissed by the Supreme Court: (1983) 140 ITR (St.) 2].

The definition of the expression "amalgamation" in section 2(1A) is effective only from 1st April, 1967. It cannot have any retrospective effect [*Modi Sugar Mills Ltd. v Union of India*, (1983) 144 ITR 29, 37 (All)].

Page 59: section 2(1A):

In line 13 from top, for "section 616", read "section 617".

Page 62: section 2(14):

At the end of serial No. (4), *add*,—"Also see, *Rajabali Nazarali & Sons v CIT*, (1987) 163 ITR 7 (Guj)." [holding that leasehold right is a capital asset].

Page 63: section 2(14):

At the end of serial No. (11), *add*,—"Also see, *Bawa Shiv Charan Singh v CIT*, (1984) 149 ITR 29 (Del). Cf. In the matter of *Kailash Financiers Pr. Ltd.*, (1982) Tax LR 2439 (Cal)." [holding that the tenancy right was a capital asset].

At the end of serial No. (13), *add*,—"Also see, *Syndicate Bank Ltd. v Addl. CIT*, (1985) 155 ITR 681 (Karn)." [holding that a business undertaking as a whole constitutes a capital asset].

However, the right acquired by the assessee under an agreement to sell is not a proprietary right and the same is not a capital asset [*CIT v R. Dalmia*, (1987) 163 ITR 517 (Del). Also see, *CIT v J. Dalmia*, (1984) 149 ITR 215 (Del)].

After the paragraph titled "*Any stock-in-trade*", *add*,—

"In the facts of *Addl. CIT v Putco Pr. Ltd.* [(1983) 140 ITR 740 (Bom)], it was held that the ship purchased by the assessee in satisfaction of a major portion of the outstanding loan constituted stock-in-trade of the assessee's money-lending business.

In the facts of *Srichand Golcha v CIT* [(1987) 167 ITR 855 (Raj)], the matter was remanded to the Tribunal to determine the question whether the emeralds on closure of the business by the assessee thenceforth carried on in his individual capacity formed part of the stock-in-trade of the newly constituted partnership firm or remained individual property of the assessee."

Page 64: section 2(14):

Lines 28-29 from top: The decision in *H. H. Maharani Usha Devi v CIT*, (1981) 6 Taxman (D) 140 (MP) has also been reported at (1982) 133 ITR 43 (MP). In the facts of that case, heirloom jewellery, which was recognised by the Central Government as a dynastic jewellery to be kept for use on ceremonial occasions, was held "personal effects" of the assessee, falling within the exclusion of section 2(14)(#). A special

leave petition against that judgment has been granted by the Supreme Court: (1983) 144 ITR (St.) 50.

However, in the facts of *CIT v Trustees of H.E.H. The Nizam's Wedding Gifts Trust* [(1985) 154 ITR 573 (AP)], it has been held that the jewelries, which were intended to be used by the beneficiaries on wedding day and other ceremonial occasions as a mark of status and they had to be returned to the trustees for safe custody after the ceremonies were over, could not be said to be intended to be used as "personal effects".

In *CIT v Smt. Saroj Goenka* [(1983) 140 ITR 88 (Mad)], it has been held, applying *CWT v Arundhati Balkrishna* [(1970) 77 ITR 505 (SC)] and *CWT v Arti Goenka* [(1980) 121 ITR 632 (Mad)], that loose diamonds could not be used as "personal effects" and, therefore, these fall within the definition of "capital asset".

On the point whether silver utensils in question could be regarded as "personal effects", reference may be made to *CIT v Sitadevi N. Poddar* [(1984) 148 ITR 506 (Bom)]; *R. Ramanathan Chettiar v CIT* [(1985) 152 ITR 493 (Mad)]; *Sardar Satnam Singh v CIT* [(1986) 159 ITR 130 (MP)]. Even though certain articles are not normally in daily use, these can be considered as "personal effects" so long as these are meant for personal use [*Jayantilal A. Shah v CIT*, (1985) 156 ITR 448 (Bom)].

Page 65: section 2(14):

In line 4 from top, after "20 CTR (Punj) 128", add,—", which has also been reported at (1982) 136 ITR 548 (Punj); *CWT v Lalchand Singhai*, (1983) 140 ITR 314 (MP); *CWT v Tarabai Kanakmal*, (1983) 140 ITR 374 (MP—FB), overruling, *Nandkishore Girdharilal Modi v CWT*, (1981) 132 ITR 868 (MP); *CWT v Smt. Vidyawati Devi Rathi*, (1986) 160 ITR 887 (Raj); *Hanuman Mal Sekhani v CWT*, (1986) 57 CTR (Raj) 185; *CWT v Smt. Godavaribai R. Podar*, (1987) 63 CTR (Bom) 152" [holding that jewellery does not embrace gold and silver ornaments which do not contain precious or semi-precious stones].

In line 9 from top, after "117 ITR 246 (All)", add,—"; *CWT v Smt. Savitri Devi*, (1983) 140 ITR 525 (Del); *CWT v Rukmani Devi*, (1983) 142 ITR 41 (Del)" [holding that the word "jewellery" would cover gold and silver ornaments irrespective of whether these are studded with precious or semi-precious stones or not].

Page 66: section 2(14):

Before the paragraph titled "Agricultural land", add,—

"Amendment of section 2(14)(ii), whence effective.—It may be noted that sub-clause (ii) of section 2(14) was substituted by the Finance Act, 1972, with effect from 1st April, 1973. Under that amendment, jewellery was, for the first time, taken within the definition of the expression "capital asset". According to the Rajasthan High Court, gain on transfer of jewellery made on or after 1-4-1973 may result into taxable capital gain. If the transfer of jewellery is made on a date prior to 1-4-1973, even though

falling in the previous year relevant to assessment year 1973-74, it will not be taxable because on the date of sale it was not a capital asset [*CIT v Laxman Singh*, (1986) 159 ITR 983 (Raj)]. On the other hand, according to the Punjab High Court, gains arising on transfer of jewellery effected during the previous year relevant to assessment year 1973-74 are exigible to capital gains tax levy even though the date of transfer fell prior to 1-4-1973 [*L. Rajeshwar Pershad v CIT*, (1986) 159 ITR 920 (Punj)]. Also see, *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 792 (Karn)."

In line 30 from top, after "116 ITR 950, 960-61 (AP)", add,— "*S. Hidhayathullah Sahib v CIT*, (1986) 158 ITR 20 (Mad)" [holding that the expression "which has a population of not less than ten thousand" in section 2(14)(iii)(a) qualifies only the municipality or cantonment and not the area].

At the end of the page, add,—

"Even under the amended definition of the expression "capital asset", the agricultural land situate in rural areas continues to be excluded from that definition [*CIT v Alanickal Co. Ltd.*, (1986) 158 ITR 630 (Ker)].

But, a land situated within the limits of a municipal corporation is a 'capital asset' as defined by section 2(14) [*CIT v Laxmi Development Co.*, (1987) 34 Taxman 367, 370 (MP)].

The aforestated notification No. 77, dated 6-2-1973 has been held not applicable retrospectively prior to 6-2-1973 [*CIT v Jitendra Ramanlal*, (1986) 162 ITR 371 (Guj); *CIT v Mamta Narottamdas*, (1986) 162 ITR 365 (Guj)]."

Page 67: section 2(14):

At the end of the paragraph titled "*Points to consider*", add,—

'On a conspectus of the decided cases, the Gujarat High Court in *CIT v Siddharth J. Desai* [(1983) 139 ITR 628, 638-9 (Guj)] has enumerated the following major factors which have a bearing on the determination of the question:—

- "(1) Whether, the land was classified in the revenue record as agricultural and whether it was subject to the payment of land revenue?
- (2) Whether, the land was actually or ordinarily used for agricultural purposes at or about the relevant time?
- (3) Whether, such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?
- (4) Whether, the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?
- (5) Whether, the permission under section 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the

- land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?
- (6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether, such cesser and/or alternative user was of a permanent or temporary nature?
 - (7) Whether the land, though entered in revenue record, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?
 - (8) Whether, the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?
 - (9) Whether, the land itself was developed by plotting and providing roads and other facilities?
 - (10) Whether, there were any previous sales of portions of the land for non-agricultural use?
 - (11) Whether, permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user?
 - (12) Whether, the land was sold on yardage or acreage basis?
 - (13) Whether, an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"

Presumption, when could be raised and when rebutted.—Once an assessee establishes that the land in question was continuously used for agricultural purposes, a *prima facie* presumption arising from such user is that the land in question continues to be agricultural land. The price paid or received and/or the situation of the particular land in a well developed area do not displace that presumption. The presumption can be rebutted only by showing that the land was not agricultural land and the current agricultural user of the land was a stop-gap arrangement pending some other user [*Gemini Pictures Circuit P. Ltd. v CIT*, (1981) 130 ITR 686 (Mad), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 65; *Sercon Pr. Ltd. v CIT*, (1982) 136 ITR 881 (Guj), special leave petition granted by the Supreme Court: (1984) 147 ITR (St.) 5].

Page 68: section 2(14):

At the end of paragraph titled "*Forest lands*", add,—"*Also see, Smt. Mangam Meenakshamma v CWT*, (1967) 63 ITR 534 (AP); *CWT v T. N. K. Govindaraju Chettiar*, (1984) 149 ITR 588 (Mad).".

Page 69: section 2(14):

After serial No. 12, *add*,—

- "13. *Gordhanbhai Kahandas Dalwadi v CIT*, (1981) 127 ITR 664 (Guj);
14. *Dr. Motibhai D. Patel v CIT*, (1981) 127 ITR 671 (Guj);
15. *Gemini Pictures Circuit Pr. Ltd. v CIT*, (1981) 130 ITR 686 (Mad);
16. *Manibhai Motibhai Patel v CIT*, (1981) 131 ITR 120 (Guj);
17. *Ramprasad C. Dalal v CIT*, (1982) 136 ITR 633 (Guj);
18. *Raza Buland Sugar Co. Ltd. v CIT*, (1981) Tax LR (NOC) 114 (Delhi);
19. *CIT v Borhat Tea Co. Ltd.*, (1982) 138 ITR 783 (Cal);
20. *CIT v Siddharth J. Desai*, (1983) 139 ITR 628 (Guj) (case-law discussed in detail with facts and decision);
21. *Sercon Pr. Ltd. v CIT*, (1982) 136 ITR 881 (Guj), special leave petition granted by the Supreme Court: (1984) 147 ITR (St.) 5;
22. *CIT v Dumraon Cold Storage Refrigeration Service Pr. Ltd.*, (1983) 141 ITR 700 (Pat);
23. *CIT v H. V. Mungal*, (1984) 145 ITR 208 (Bom);
24. *Chandulal Lallubhai v CIT*, (1983) 139 ITR 642 (Guj);
25. *CWT v T. N. K. Govindaraju Chettiar*, (1984) 149 ITR 588 (Mad);
26. *CIT v Lilavati Thakorelal Patel*, (1985) 152 ITR 565 (Guj);
27. *CIT v Anilbhai J. Chinai*, (1984) 43 CTR (Bom) 338;
28. *Bhikhabhai Bechardas Patel v CIT*, (1983) Taxation 68(1)-18 (Guj);
29. *CWT v Tara Chand Jain*, (1987) 164 ITR 516 (Pat);
30. *CIT v Tara Chand Jain*, (1987) 164 ITR 520 (Pat).

Also see, *CWT v Smt. Sheela Devi*, (1970) 77 ITR 693 (Punj); *CWT v Sitaram N. Desai*, (1977) 109 ITR 13 (Bom); *CIT v Fagoomal Lakshmi-chand*, (1978) 112 ITR 9 (Ker); *D. L. F. United Ltd. v CIT*, (1986) 158 ITR 342 (Del)."

In the above cases, it was held, on facts, that the land was agricultural land.

Page 70: section 2(14):

After serial No. 8, *add*,—

- "9. *CIT v Smt. Sarifabibi Mohmed Ibrahim*, (1982) 136 ITR 621 (Guj), special leave petition granted by the Supreme Court: (1983) 140 ITR (St.) 5;
10. *Arundhati Balkrishna v CIT*, (1982) 138 ITR 245 (Guj), special leave petition dismissed by the Supreme Court: (1984) 149 ITR (St.) 130;
11. *CWT v T. N. K. Govindaraju Chettiar*, (1984) 149 ITR 588 (Mad);
12. *Raja D. Seshayamma Garu v CIT*, (1985) 156 ITR 820 (Mad),

special leave petition dismissed by the Supreme Court: (1983) 141 ITR (St.) 44;

13. *M. Ramanamma v CWT*, (1986) 157 ITR 555 (AP);
14. *Kalpaka Oil Mills v CIT*, (1986) 160 ITR 604 (Ker);
15. *CIT v Universal Cine Traders P. Ltd.*, (1986) 161 ITR 696 (Bom);
16. *Jagwansh Kumar v Union of India*, (1987) 167 ITR 283 (All).

Also see, *Sri Krishna Rao L. Balekai v WTO*, (1963) 48 ITR 472 (Mys); *CWT v Sitaram N. Desai*, (1977) 109 ITR 13 (Bom); *CWT v Mrs. Mary Rockie*, (1987) 167 ITR 153 (Ker); *Syed Abdul Basir v CIT*, (1987) 33 Taxman 126 (Raj)."

In the above cases, it was held, on facts, that the land was not agricultural land.

Page 70: section 2(14):

At the end of paragraph titled "*Vires of section 2(14)(iii)*", add,—

"The decision in *Manubhai A. Sheth v ITO* [(1981) 128 ITR 87 (Bom)] has been followed in *Nadirshah Rustamji Mulla v ITO: Meherbai Nadirshah Mulla v ITO* [(1985) 154 ITR 629 (Bom)] and has been applied in *Sulekha Sandip Parikh v ITO* [(1986) 159 ITR 775 (Bom)].

The Karnataka High Court, in *B. S. Jayachandra v ITO* [(1986) 161 ITR 190 (Karn)], has agreed with the view taken by the Gujarat High Court in *Ambalal Maganlal v Union of India* [(1975) 98 ITR 237 (Guj)] and has expressed inability to subscribe to the reasoning and conclusion reached by the Bombay High Court in *Manubhai A. Sheth v ITO* [(1981) 128 ITR 87 (Bom)]. Also see, *CIT v B. S. Rajendrappa*, (1986) 162 ITR 666 (Karn); *CIT v Smt. T. K. Sarala Devi*, (1987) 167 ITR 136 (Ker)."

Page 72: section 2(14):

After serial No. IV, add,—*"V. Press Communiqué No. CC/ITA-II/5113/1301/RSP/83, dated 22nd September, 1980, which has been reproduced at Serial No. II at pages 58-60 of Authors' "Income-tax Companion", Vol 1.*

VI. Circular No. 415, dated 14th March, 1985, which has been reproduced at page [lxxxiv] of Authors' "*Income-tax Companion*", Vol 2.

VII. *National Defence Gold Bonds, 1980: repayment.*—Press release in this regard has been printed at (1987) 165 ITR (St.) 353."

Page 73: section 2(17):

The decision in *Heckett Engineering Co. v CIT* [(1979) 120 ITR 417 (Pat)], which has been referred to in the footnote marked†, has been affirmed on another point in *CIT v Heckett Engineering Co. (India Branch)* [(1984) 145 ITR 514 (SC)].

Page 74: section 2(17):

After line 18, *add*,—

“In *Swedish East Asia Co. Ltd. v CIT* [(1982) 133 ITR 407 (Cal)], a non-resident shipping company incorporated in Sweden was held to be a company for the purposes of the Companies (Profits) Surtax Act, 1964 (7 of 1964), by virtue of the provisions of section 2(9) of Act 7 of 1964 whereby the definition of “company” in section 2(17) of the 1961 Act has been incorporated in Act 7 of 1964.

In *Madhya Pradesh Financial Corporation v CIT* [(1981) 132 ITR 884, 886 (MP)], a State Financial Corporation established under the State Financial Corporations Act, 1951, has been held to be a “company” for the purposes of the levy of income-tax. The provisions of section 2(17)(i) read with section 2(26)(ia) of the 1961 Act are apposite on the point.”.

Page 77: section 2(17):

Before line 11 from the bottom, *add*,—

“In *Workmen of Associated Rubber Industry Ltd. v Associated Rubber Industry Ltd.* [(1986) 157 ITR 77 (SC)], the corporate veil of a subsidiary company, which was formed as a device to reduce the gross profits of the parent company and thereby reducing the amount to be paid by way of bonus to the employees, was ignored as the same was found to have been accomplished with a view to avoid welfare legislation. In taking that view, their Lordships relied on *McDowell & Co. Ltd. v CTO* [(1985) 154 ITR 148 (SC)], wherein tax avoidance devices have been deprecated. Also see, *Life Insurance Corporation of India v Escorts Ltd.*, AIR 1986 SC 1370, 1418, 1419=(1986) 59 Comp Cas 548 (SC).

In the facts of an earlier decision in *Orissa Industries Ltd. v State of Orissa* [(1983) Tax LR 2501 (Ori)], it was held that the doctrine of lifting the corporate veil was applied improperly.”.

Page 81: section 2(17):

At the end of paragraph titled “10. *Industrial company*”, *add*,—“In that view of the matter, the profits from sale of import entitlements were held to be attributable to the activity of the manufacture and export of carpets [*Obeetee Pr. Ltd. v CIT*, (1983) 143 ITR 793 (All)]. Also see, *CIT v E. Hill & Co.*, (1984) Taxation 72(1)-18 (All)].

In the facts of the following cases, the company was *held to be* an industrial company:—

1. *Addl. CIT v Kalsi Tyre Pr. Ltd.*, (1981) 131 ITR 636 (Del), special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 13 [activity of retreading of tyres, held “processing of goods”]. Also see, *CIT v Kalsi Tyre Pr. Ltd.*, (1982) 11 Taxman 79 (Del).
2. *CIT v Neo Pharma Pr. Ltd.*, (1982) 137 ITR 879 (Bom) [manufacturing activity carried on with the help of machinery taken on hire].

3. *CIT v Lakhtar Cotton Press Co. Pr. Ltd.*, (1983) 142 ITR 503 (Guj) [pressing of cotton by mechanical device and packing it into commercially acceptable bales].
4. *G. A. Renderian Ltd. v CIT*, (1984) 145 ITR 387 (Cal) [blending of different qualities of tea, held amounting to processing of goods].
5. *CIT v Oricon Pr. Ltd.*, (1985) 151 ITR 296 (Bom) [some of the processes were got done through sub-contractors. The High Court did not decide the question whether a construction company qualified to be considered as an industrial company in view of the limited scope of the question referred].
6. *CIT v Datacons Pr. Ltd.*, (1985) 155 ITR 66 (Karn) [a company engaged in processing of datas furnished by its customers].
7. *CIT v Bharat Ram Charat Ram Pr. Ltd.*, (1986) 157 ITR 199 (Del) [assessee-company partner in a manufacturing firm, share income exceeding 51 per cent. of companys' total income].
8. *Nu-look Pr. Ltd. v CIT*, (1986) 157 ITR 253 (Del) [tailoring cloth to the order of the customers, held constituted "manufacturing or processing of goods"].
9. *Shree Mulchand Co. Ltd. v CIT*, (1986) 162 ITR 764 (Bom) [activities of the assessee in sorting out, washing, drying and blending wool have been held amounting to "manufacturing or processing of goods"].
10. *CIT v Kutch Oil & Allied Industries Pr. Ltd.*, (1987) 163 ITR 237 (Guj) [activity of pulverising Bentonite].

A book-publishing company may qualify to be treated as an industrial company [see, circular No. 347, dated 7th July, 1982, which has been reproduced at serial No. IV, at pages 1605-06 of Authors' "Income-tax Companion", Vol 2].

In the facts of the following cases, the company was *held not to be* an industrial company:—

1. *Addl. CIT v Chillies Export House Ltd.*, (1978) 115 ITR 73 (Mad) [activities carried on by the assessee, an exporter of chillies, such as stemming, clipping and grading of chillies and fumigation by a contractor, held not amounting to processing of goods]. Also see, *Chillies Export House Ltd. v CIT*, SLP (Civil) No. 9015 of 1982: (1983) 141 ITR (St.) 49.
2. *CIT v Buhari Sons Pr. Ltd.*, (1983) 144 ITR 12 (Mad) [hotel preparing eatables].
3. *Koshy's Pr. Ltd. v CIT*, (1985) 154 ITR 53 (Karn) [restaurant].
4. *Delhi Cold Storage Pr. Ltd. v CIT*, (1985) 156 ITR 97 (Del) [a company engaged in running a cold storage].

5. *Golcha Properties Pr. Ltd. v CIT*, (1987) 166 ITR 259 (Raj)
[company carrying activity of exhibiting films].

In *CIT v Tiecicon Pr. Ltd.* [S.L.P. (Civil) No. 15 of 1981: (1983) 144 ITR (St.) 11], their Lordships of the Supreme Court have granted, by an order dated 9-9-1983, special leave to the Department to appeal against the order dated 24-2-1980 of the Bombay High Court in I.T.A. No. 3 of 1980, refusing to call for a statement of case on the question whether the assessee-company, a tenant of a portion of a building and engaged in the business of providing air-conditioning facilities to the other tenants, was an industrial company liable to a lower rate of tax.

In *Nava Bharat Enterprises Pr. Ltd. v CIT* [(1983) 143 ITR 804 (AP)], it has been held that a company which is mainly engaged in the specified activity contemplated by the definition clause shall be deemed to be an industrial company notwithstanding the fact that its income from such activity is less than 51 per cent. of its total income, and that the *Explanation* to the definition clause applies only where the company is not mainly engaged in the specified activity but still the income attributable to the specified activity is 51 per cent. or more of its total income.

Also see, *CIT v Bhavnagar Bone & Fertiliser Co. Ltd.*, (1987) 166 ITR 316 (Guj); *CIT v Micky B. (P.) Ltd.*, (1987) 61 CTR (Del) 181.

Construction company, whether an industrial company?—Upto assessment year 1983-84, a company engaged in the business of construction of buildings has been held not to be an “industrial company” [see, *CIT v Minocha Bros. Pr. Ltd.*, (1986) 160 ITR 134 (Del), special leave petition granted by the Supreme Court: (1986) 159 ITR (St.) 109; *CIT v N.U.C. Pr. Ltd.*, (1980) 126 ITR 377 (Bom). Also see, *CIT v Shah Construction Co. Ltd.*, (1983) 142 ITR 696 (Bom)].

However, for assessment years 1984-85 and 1985-86, a company engaged in the execution of a project for the construction of a building, etc., is, as per the definition in the Finance Act, 1984 and the Finance Act, 1985, also an industrial company.

It may be noted that the Finance Act, 1986, has dispensed with a definition of ‘industrial company’, as there is no special rate specified for an industrial company as such. Instead, special rates have been specified for an investment company and a trading company.”

At the end of paragraph titled “11. *Investment company*”, add,—“A definition of the expression “investment company” has been coined in section 2(7)(d) of the Finance Act, 1986, for the purposes of section 2 and the First Schedule to that Act, whereby rates of tax have been prescribed, *inter alia*, for companies.

Page 82: section 2(17):

At the end of paragraph titled “16. *Trading company*”, add,—“A definition of the expression “trading company” has been coined in section 2(7)(g) of the Finance Act, 1986, for the purposes of section 2 and the First

Schedule to that Act, whereby rates of tax have been prescribed, *inter alia*, for companies.”.

Page 83: section 2(19):

After line 26 from top, *add*,—

“For and from assessment year 1984-85, profits derived by a primary co-operative society from the business of supplying oilseeds, fruits or vegetables raised or grown by its members to a federal co-operative society engaged in the business of supplying oilseeds, fruits or vegetables or to Government or a local authority or to a Government company as defined in section 617 of the Companies Act, 1956, or a statutory corporation which is engaged in supplying oilseeds, fruits or vegetables to the public are exempt from income-tax in their entirety.”.

Page 85: section 2(19):

After line 16 from top, *add*,—

“In case of co-operative societies, the rates of income-tax for assessment years 1982-83 to 1988-89 are the same as for the assessment years from 1970-71 to 1981-82 as stated above.

The amount of income-tax computed at the rates hereinbefore specified is to be increased by a *surcharge* for the purposes of the Union calculated at the rate of 10 per cent. for the assessment years 1982-83 and 1983-84; and at the rate of 12.5 per cent. for assessment years 1984-85 and 1985-86. The levy of surcharge has been discontinued for assessment years 1986-87 to 1988-89.”.

Page 87: section 2(22):

Before the paragraph titled “*Dividend, ordinary meaning*”, *add*,—

“**Strict construction needed.**—Under section 2(22), certain amounts, which are actually not distributed as dividends, are also brought within the net of dividends. Therefore, that section must receive a strict interpretation [*CIT v Martin Burn Ltd.*, (1982) 136 ITR 805, 815 (Cal)].”.

Pages 90-91: section 2(22):

On the point, whether capital gains form part of the “accumulated profits”, reference may also be made to *CIT v R. Dalmia* [(1987) 163 ITR 519 (Del)].

Page 92: section 2(22):

After line 2 from top, *add*,—

“Similarly, any distribution, etc., made to a shareholder of a company of the amount attributable to compensation for acquisition/sale price for sale of agricultural land, when such land was expressly excluded from the definition of “capital asset” in section 2(14), cannot be treated to be taxable as deemed dividend. This is so because the profit, if any, embedded in

such compensation or sale price could not form part of "accumulated profits" [*Smt. Chechamma Thomas v CIT*, (1986) 161 ITR 718 (Ker)].".

Page 93: section 2(22):

After the paragraph titled "*Depreciation reserve, if 'accumulated profits'?*", add,—

"In *CIT v Jaldu Rama Rao* [(1983) 140 ITR 168 (AP)], the depreciation fund has been held not to form part of 'accumulated profits'.

Building reserve fund forms part of 'accumulated profits'.—Unlike a depreciation fund, a building reserve fund created from out of the profits has been held to form part of 'accumulated profits' [*CIT v Jaldu Rama Rao*, (1983) 140 ITR 168 (AP)].".

Page 101: section 2(22)(c):

At the end of the paragraph titled "*Attributable to the accumulated profits of the company*", add,—

"In *CIT v Martin Burn Ltd.* [(1982) 136 ITR 805 (Cal)], the assessee company held shares in an electricity supply company 'U'. U's undertaking was handed over to the State Board, and it went into liquidation. The Official Liquidator of U Co. received compensation from the State Government. The quantum of such compensation was determined after deducting the amounts standing to the credit of three special reserve accounts. Out of such compensation received, the Official Liquidator made distribution, *inter alia*, to the assessee-shareholder. The question arose whether the amount so received by the assessee was assessable as deemed dividend under section 2(22)(c). It was held that in view of the fact that the three reserves were deducted before the compensation was ascertained and paid, the amount received by the assessee was not assessable as deemed dividend."

Page 104: section 2(22)(e):

Before the paragraph titled "*Legal fiction*", add,—

"*Scope of section 2(22)(e) widened.*—As a result of the amendment made in section 2(22)(e) by the Finance Act, 1987, the scope of the provisions of section 2(22)(e) has been widened with effect from 1st April, 1988, i.e., for and from assessment year 1988-89.

Upto assessment year 1987-88, section 2(22)(e) has application, on fulfilment of all other conditions, in relation to any payment, by a closely-held company, of any sum by way of advance or loan to a shareholder, who has a substantial interest [as defined in section 2(32)] in the company.

For and from assessment year 1988-89 that section 2(22)(e) shall have application, on fulfilment of all other conditions, in relation to any payment, by a closely-held company, of any sum by way of advance or loan to—

—a shareholder, who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10 per cent. of the voting power, or

—any concern [as defined in *Explanation 3(a)* to section 2(22)] in which such shareholder is a member or a partner and in which he has a substantial interest [as defined in *Explanation 3(b)* to section 2(22)/in section 2(32)].”.

Page 105: section 2(22)(e):

At the end of line 8 from top, *add*,—“Also see, *CIT v Mother India Refrigeration Industries Pr. Ltd.: Hindustan Vacuum Glass Ltd. v CIT*, (1985) 155 ITR 711, 718 (SC); *CIT v Bharat Lines Ltd.*, (1986) 159 ITR 541 (Bom); *M. D. Jindal v CIT*, (1987) 164 ITR 28 (Cal).” [holding that legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond that legitimate field].

Page 106: section 2(22)(e):

Before the paragraph titled “*The mischief sought to be cured by section 2(22)(e)*”, *add*,—

“In the facts of *CIT v Sohanlal Jajodia* [(1987) 164 ITR 626 (Cal)], it has been held that there was sufficient material before the Tribunal to come to the conclusion that no payment had been made by the closely-held company to the assessee. Therefore, the provisions similar to section 2(22)(e) were not attracted.”.

Page 108: section 2(22)(e):

In line 9 from top, after “76 ITR 369, 377 (Bom)]”, *add*,—“Also see, *CIT v Mrs. Maya B. Ramchand*, (1986) 162 ITR 460 (Bom).” [holding that the computation of the amount of deemed dividend is to be made on the basis of company’s accumulated profits on each day a loan or advance to the assessee was made].

Page 109: section 2(22)(e):

Lines 6 and 7 from top: For “(1981) 21 CTR (Raj) 104”, read “(1981) 132 ITR 806 (Raj); *R. B. Seth Ram Rattan v CIT*, (1985) 156 ITR 612 (Dej)” [holding that a shareholder in section 2(22)(e) means the registered shareholder].

Page 110: section 2(22)(e):

After the paragraph titled “*Loan—connotation of*”, *add*,—

“In the facts of *CIT v P. Sarada* [(1985) 154 ITR 387 (Mad)], the excess withdrawals made by the assessee, a substantial shareholder of a closely-held company, from that company were held to be treated as loan or advance by the company to the assessee so as to attract the deeming provisions of section 2(22)(e).”.

Page 111: section 2(22)(e):

After the paragraph titled “*Advances*”, *add*,—

“In the *Dictionary for Accounts* by Eric L. Kohler (5th Edition), the

expression 'advance' has been defined as payment of cash or the transfer of goods for which accounting must be rendered by the recipient at some later date. In *M. D. Jindal v CIT* [(1987) 164 ITR 28 (Cal)], the facts were broadly as follows: A closely-held company, wherein the assessee was having a substantial interest, supplied to the assessee iron rods for the construction of a building owned by the assessee jointly with his wife and his two minor sons. The price of the said iron rods was adjusted against earnest money in respect of sale, in future, of certain flats by the assessee to the said company. It was held, on facts, that there was an advance made by the company to the assessee by way of transfer of goods. That by such transfer, a benefit has accrued to the assessee. Therefore, the Tribunal was held justified in coming to the conclusion that the provisions of section 2(22)(e) were attracted."

Page 112: section 2(22)(iii):

At the end of the page, *add*,—

"The statutory provisions of sub-clause (iii) of section 2(22) require a set-off to be made by the company in respect of deemed dividends under section 2(22)(e) and this set-off can only be against some amount receivable by the company from the assessee-shareholder in whose hands such deemed dividends have been so treated. If by the time company pays actual dividends, there remains nothing payable by the assessee-shareholder in respect of the loan or advance as contemplated by section 2(22)(e), there can be no occasion for the company to set-off the amount of actual dividend against such loan or advance. In such circumstances, the assessee-shareholder is not entitled to the set-off of deemed dividends under section 2(22)(e) against dividends actually declared and paid [*L. P. Badiani v CIT*, (1985) 154 ITR 204 (Bom)]."

Page 115: section 2(31):

In line 6 from top, after "95 ITR 130 (AP)", *add*,—""; *Sham Narain v ITO*, (1981) 131 ITR 105 (Del); *CIT v Khalid Mehdi*, (1987) 165 ITR 685 (AP)" [holding that after making assessments of members of an association of persons, the Income-tax Officer cannot assess the association of person as a separate entity].

Page 116: section 2(31):

In line 17 from top, after "128 ITR 39 (Cal)" *add*,—""; *Venkatkrishna Rice Co. v CIT*, (1987) 163 ITR 129 (Mad)" [holding that the option to assess either the association of persons as such or the individual members separately continues under the 1961 Act provisions].

Page 116: section 2(31):

In line 24 from top, after "121 ITR 604 (Del)", *add*,—""; *Choudry Bros. v CIT*, (1986) 158 ITR 224 (AP), special leave petition dismissed by the Supreme Court: (1986) 155 ITR (St.) 65; *M. K. Dar v CIT*, (1982) 138

ITR 801 (All))” [holding that there is no bar under the provisions of the 1961 Act against assessing an association of persons even though its members had already been assessed separately].

Page 117: section 2(31):

In line 2 from top, after “109 ITR 92 (Punj)”, add,—“; *Sudsons Construction Co. v Addl. CIT*, (1983) 140 ITR 634 (Del) [holding that an assessment on an unregistered firm is valid even though the partners of the firm had been separately assessed earlier]; *CIT v Chandigarh Bottling Co.*, (1986) 160 ITR 780 (Punj) [holding that because of the fact of prior completion of individual assessment of a partner, the firm has to be granted registration].

However, in *CIT v V. H. Sheth* [(1984) 148 ITR 169 (Bom)], it has been held that once the assessment of a partner or a member of an association has been made by taxing directly his proportionate share from the firm or association, the Income-tax Officer is precluded from assessing the firm in the status of an unregistered firm or an association of persons. In taking that view, the Bombay High Court has relied on a departmental circular dated 24th August, 1966, which clarified that although the Supreme Court decision in *CIT v Murlidhar Jhawar and Purna Ginning and Pressing Factory* [(1966) 60 ITR 95 (SC)] was under the 1922 Act, the Board was advised that it would equally apply to assessments made under the Act. Also see, *Narnauli Jewel Corporation v CIT*, (1987) 163 ITR 293 (Raj).”.

Page 117: section 2(31):

After line 15 from top, add,—

“Assessment in a different status possible.—The Income-tax Officer can assess a person in a status other than the one in which the assessee had filed his or its return if the facts and circumstances so require. If the assessee be aggrieved of the assessment in that status, he or it can file an appeal against the order challenging his or its status [*Munilal Shivnarain Kothari v CIT*, (1984) 149 ITR 567 (Raj)].

Assessment to be made in the hands of a person to whom the income belongs.—In the facts of *CIT v Standard Mercantile Company* [(1985) 153 ITR 105 (Pat)], the income from a particular business was held not assessable in the hands of the assessee-firm. However, such income was held to belong to and be assessable in the hands of one of the partners of that firm in his individual capacity [*CIT v Vasudeo Agarwal*, (1986) 160 ITR 906 (Pat)].

The decision in *CIT v Standard Mercantile Company* [(1985) 153 ITR 105 (Pat)], has been followed in *CIT v Standard Mercantile Company* [(1987) 61 CTR (Pat) 60].

Assessment of a member/partner possible even though the AOP/firm has not been assessed.—The mere fact that the association of persons itself has not been assessed as such cannot stand in the way of every member of

the association being assessed in respect of his share of the income [*Kailash Lamba v CIT*, (1986) 157 ITR 266, 268 (Del)].

Similarly, a partner can be assessed on his share income from a firm even if the firm itself has not been assessed [*CIT v Smt. Rani Lalita Rajya Laxmi*, (1986) 159 ITR 186 (Pat)].”.

Page 122: section 2(31):

Lines 12 and 13 from top: The decision in *Ram Swarup Kaushal v Union of India* [(1981) Tax LR 9 (All)] has also been reported at (1983) 139 ITR 887 (All).

After line 16 from top, *add*,—

‘Member of specified HUF, what it includes?—The expression “member”, in the context of Hindu undivided families, includes any member, whether male or female and not necessarily a coparcener. In that view of the matter, a Hindu undivided family having even one female member with independent taxable income is to be charged to income-tax at the higher rate prescribed in that behalf [*S. Venka Reddy v CIT*, (1986) 157 ITR 489 (AP); *Premchand v CIT*, (1984) 148 ITR 440 (AP). Cf. *S. Venka Reddy v CWT*, (1986) 159 ITR 683 (AP); *A. Viswanatha Thevar v CWT*, (1986) 157 ITR 819 (Mad); *S. Gopal Reddy v CWT*, (1985) 22 Taxman 279 (AP); *K. Ramana Reddy v CWT*, (1986) Tax LR 1384 (AP)].’.

Page 125: section 2(31):

At the end of line 8 from top, *add*,—“The Hindu law applies to the Sikhs as well [*CWT v Sardar Surjit Singh*, (1982) 138 ITR 186, 191 (Cal)].”.

Page 125: section 2(31):

At the end of the paragraph titled “*Community of interest and unity of possession essential*”, *add*,—

“The essence of a coparcenary under the *Mitakshara* School of Hindu Law is community of interest and unity of possession. A member of joint Hindu family has no definite share in the coparcenary property, but he has an undivided interest in the property which is liable to be enlarged by deaths and diminished by births in the family. An interest in the coparcenary property accrues to a son from the date of his birth. His interest will be equal to that of his father [*Thamma Venkata Subbamma v Thamma Rattamma*, AIR 1987 SC 1775, 1777].”.

Page 126: section 2(31):

After the paragraph titled “‘*Creation of a HUF . . .*’”, *add*,—

“A Hindu undivided family with all its incidents is a creature of law and cannot be created by act of parties. It is wider than a Hindu coparcenary [*CIT v P. N. Talukdar*, (1982) 135 ITR 628, 638 (Cal)].

A legal entity.—Excepting in certain special statutes and in certain special circumstances, the law recognises a joint family as a legal entity,

although acting through its *karta*. There is no bar to a joint family being treated as an entity in itself for commercial dealings and other purposes. There is no legal objection to the joint family being treated as a person [*T. M. N. M. Somasundara Nadar Sons v CIT*, (1982) 137 ITR 815, 817-8 (Mad); *Venkatesh Emporium v CIT*, (1982) 137 ITR 593 (Mad)].”.

Page 129: section 2(31):

After line 2 from top, *add*,—

“Fusion of bigger HUF into a smaller HUF.—See, at page 3371 of Vol. 4.”.

Page 129: section 2(31):

Lines 15-16 from top: The decision in *CIT v Daljit Singh* [(1980) 15 CTR (Punj) 260] has also been reported at (1981) 131 ITR 719 (Punj).

Lines 29-30 from top: The decision in *CGT v R. M. D. M. Ranganathan Chettiar* [(1980) 19 CTR (Mad) 221] has also been reported at (1982) 133 ITR 890 (Mad). Also see, *Rai Satya Vrata v CIT*, (1983) 141 ITR 634 (All).

Page 130: section 2(31):

In line 6 from top, after “124 ITR 844, 851 (Mad)”, *add*,—“Also see, *Gangadhar Narsingdas Agrawal v CIT*, (1986) 162 ITR 320 (Bom).”.

Page 130: section 2(31):

For the paragraph titled “*Gift of undivided coparcenary interest*”, *substitute*,—

“*Gift of undivided coparcenary interest*.—A gift by a coparcener of his undivided interest in the coparcenary property is void. The reason as to why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift is that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated. The rigour of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of that Act permits the disposition by way of will of a male Hindu in a *Mitakshara* coparcenary property.

When it is said that a gift of an undivided share is void it does not mean that it is void only in the sense that it is not binding on the other coparceners and not void in the sense that it is a nullity.

It is, however, a settled law that a coparcener can make a gift of his undivided interest in the coparcenary property to another coparcener or to

a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid [*Thamma Venkata Subbamma v Thamma Rattamma*, AIR 1987 SC 1775, 1778, 1779, 1780]. In taking the above view, the Supreme Court has **affirmed** (though on different ground) *Thamma Rattamma v Thamma Venkata Subbamma* [AIR 1973 AP 226] and **overruled** *Suryakantam v Suryanarayanamurthy* [AIR 1957 AP 1012]. In the facts of the Supreme Court case, it has been held that although the gift was ostensibly in favour of the brother, but really the donor meant to relinquish his interest in the coparcenary in favour of the brother and his sons. The gift was, therefore, valid construing the same as renunciation or relinquishment by the donor of his interest in the coparcenary, and, accordingly, the consent of the other coparceners was immaterial.

In view of the above Supreme Court ruling, the decision in *CED v Estate of Late M. V. K. Papa Rao* [(1981) 128 ITR 813 (AP)] is not accurate on the point.

The provisions of section 30 of the Hindu Succession Act, 1956, are confined only to testamentary dispositions and do not cover dispositions by way of gifts *inter vivos* [see, *CWT v Sampatrai Bhutoria & Sons*, (1982) 137 ITR 868 (Cal); *S. V. Sundaresan v ACED*, (1983) 144 ITR 916 (Mad)].”.

Page 132: section 2(31):

At the end of line 9 from top, *add*,—“The beneficent provisions contained in section 14(1) are not violative of Articles 14 and 15(1) of the Constitution [*Partap Singh v Union of India*, AIR 1985 SC 1695].

On an analysis of section 14(1), it is evident that the Legislature has abolished the concept of limited ownership in respect of a Hindu female and has enacted that any property possessed by her would thereafter be held by her as a full owner. Section 14(1) would come into operation if the property at the point of time when she has an occasion to claim or assert a title thereto. Or, in other words, at the point of time when her right to the said property is called into question. The legal effect of section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by any one that a Hindu female is only a limited owner and not a full owner [*Jagannathan Pillai v Kunjithapadam Pillai*, AIR 1987 SC 1493, 1496 (SC)]. In that case, a Hindu female acquired a property by reason of the death of her husband before the date of commencement of the Hindu Succession Act, 1956 (*i.e.*, before 17-6-1956). The widow transferred that property in favour of an alienee by a registered document executed prior to 17-6-1956. That property was retransferred to her by the alienee after 17-6-1956. It was held by the Supreme Court that the retransfer, in effect, obliterated the initial transfer. Therefore, in view of the provisions of section 14(1) of that Act, on the date on which the retransfer took place, she became possessed of the property subsequent to 17-6-1956 and she became the full and absolute owner of that property. In so holding, the view taken in *Chinnakolandai Goundan v Thanji Goundan*, AIR 1965

Mad 497; *Teja Singh v Jagat Singh*, AIR 1964 Punj 403; *Ramgowda Aunagowda v Bhausahab*, AIR 1927 PC 227 and *Bai Champa v Chandrakanta Hiralal Dahyabhai Sodagar*, AIR 1973 Guj 227 has been approved and the view taken in *Ganesh Mahanta v Sukria Bewa*, AIR 1963 Ori 167 and *Medicherla Venkatarathnam v Siddani Palamma*, (1970) 2 Andhra WR 264 (AP) has been overruled.

Section 14(1) has also been interpreted in *CWT v Baliyepalli Sridevamma*, (1987) 165 ITR 167 (AP); *CIT v Harish Chand Golcha*, (1987) 167 ITR 101 (Raj); *State of Kerala v K. P. Gopal*, (1987) Tax LR 631 (Ker).”.

Page 133: section 2(31):

Lines 5-7 from the bottom: The decision in *Gurupad Khandappa Magdum v Hirabai Khandappa Magdum* [AIR 1978 SC 1239] has also been reported at (1981) 129 ITR 440 (SC). That decision has been distinguished in *State of Maharashtra v Narayan Rao Sham Rao Deshmukh* [AIR 1985 SC 716=(1987) 163 ITR 31 (SC)] wherein it has been held that the decision in *Gurupad's* case [129 ITR 440] has to be treated as an authority for the position that when a female member who inherits an interest in the joint family property under section 6 of the Hindu Succession Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which would have been notionally allotted to her, as stated in *Explanation I* to section 6 of that Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family.

The proviso to section 6 of the Hindu Succession Act does not come into operation where there was no coparcenary in existence at the time of the death of the male member [*CED v Smt. S. Harish Chandra*, (1987) 167 ITR 230 (All)].

Page 135: section 2(31):

After the third line from top, *add,—*

“Adoption made on or after 21-12-1956 by the widow does not divest her of the inheritance, etc., already vested in her.—After the coming into force of the Hindu Adoptions and Maintenance Act, 1956, with effect from 21st December, 1956, the full ownership conferred on a Hindu female under section 14(1) of the Hindu Succession Act, 1956, is not defeasible by the adoption made subsequent to 21-12-1956 by her to her deceased husband [*Punithavathi Ammal v Ramalingam*, AIR 1970 SC 1730]

In *Smt. R. Rajathy Ammal v CWT* [(1987) 164 ITR 605 (Mad)], the assessee, in October, 1962, inherited certain properties on the death of her husband as his sole heir. On 14-12-1969, the assessee adopted a minor child. For the assessment year 1970-71, she claimed the status of Hindu undivided family in respect of such property. It was held that by virtue of section 14 of the Hindu Succession Act, she became the absolute owner.

of such property which could not be divested as a result of the subsequent adoption. Therefore, the status could not be taken as that of HUF.

According to old Hindu law texts as interpreted by courts, on adoption by a Hindu widow, the adopted son acquired all the rights of an *aurasa* son, and those rights related back to the date of the death of the husband [*Srinivas Krishnarao Kango v Narayan Devji Kango*, AIR 1954 SC 379]. In such cases, the estate held by the widow was a defeasible estate [*Krishnamurthi v Dhruwaraj*, AIR 1962 SC 59].

The nature, character and concomitants of stridhan.—The position of *stridhan* of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes—she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt. Neither section 27 of the Hindu Marriage Act, 1955, nor section 14 of the Hindu Succession Act, 1956, goes to the extent of providing that the concept of *stridhan* is abolished or that a remedy under the criminal law for breach of trust has been taken away. All that the said two sections provide is that if the husband refuses to return the *stridhan* property of his wife, it will be open to the wife to recover the same by a properly constituted suit.

The mere factum of the husband and the wife living together does not entitle either of them to commit a breach of criminal law and if one does, then he/she will be liable for all the consequences of such breach. Further, it is neither appropriate nor apposite to import the concept of partnership into the relationship of husband and wife for the simple reason that the concept of partnership is entirely different from that of the husband's keeping the *stridhan* in his custody. A pure and simple entrustment of *stridhan* without creating any right in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife. If he refuses to do so, the wife can lodge a complaint against him under sections 405/406 of the Indian Penal Code [*Pratibha Rani v Suraj Kumar*, (1985) 155 ITR 190, 195, 198, 200, 201, 203 (SC)].”

Page 135: section 2(31):

After ‘129 ITR 755 (Punj)’ in line 30 from top, *add,—“; Shrivallabhdas Modani v CIT*, (1982) 138 ITR 673 (MP); *State of Tamil Nadu v P. Ganesa*

Udayar, (1987) 63 CTR (Mad) 217" [on the subject "*Single male member, income whether of a HUF?*"].

In *CIT v Shankar Lal Budhia* [(1987) 165 ITR 380 (Pat—FB)], it has been held that the status of an individual (male) assessee governed by Hindu law would not change to that of a Hindu undivided family under the Income-tax Act automatically on his marriage.

Page 136: section 2(31):

Lines 4-9 from top: For the portion beginning with 'The property of a Hindu undivided family' and ending with '129 ITR 755 (Punj)]', *read*,—"Thus, a coparcener along with his wife can constitute a Hindu undivided family in respect of property received on the partition of a bigger Hindu undivided family even though he had no son [*CIT v Krishna Kumar*, (1983) 143 ITR 462 (MP—FB); *Kishanlal Moolchand v CIT*, (1987) 166 ITR 449 (MP)]. On the other hand, if at the time of partition, the coparcener was an unmarried person, he cannot be said to constitute a Hindu undivided family even along with his subsequently married wife in respect of income from such property. In *CIT v Vishnukumar Bhaiya* [(1983) 142 ITR 357 (MP), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 187], the assessee, who was then unmarried, received certain assets on the partition of the Hindu undivided family. He got married later on. He claimed the status of HUF for post-marriage period in respect of the assets so received on partition. It was held that when the property was received by the assessee on partition, he was a single member and did not constitute a family. His status then was that of an individual. The fact of his marriage did not alter the position. In the absence of a son the personal law of the assessee regards him as the individual owner of the assets so received by him on partition and the income therefrom as his individual income. In taking that view, the Madhya Pradesh High Court has dissented from the view taken by the Allahabad High Court in *Prem Kumar v CIT* [(1980) 121 ITR 347 (All)], which had held that once the sole coparcener later got married, a Hindu undivided family came into existence and the income from such property had to be assessed in the hands of the undivided family consisting of himself and his wife.

In *Kundan Lal v CIT* [(1981) 129 ITR 755 (Punj)], the bigger Hindu undivided family consisted of one K, his wife, his three sons and a daughter. On partitions effected from time to time, all the three sons got separated. It was held that the property left in the hands of K did not change its character as HUF property merely because all the sons had left the coparcenary and he was left with his wife and daughter which constituted a family."

Page 137: section 2(31):

In line 5 from the bottom, after "(1) above stated.", *add*,—"This principle has been applied in *CIT v M. Balasubramaniam* [(1981) 132 ITR 529 (Mad)]. In that case, out of his self-acquired property the father made a

gift to his unmarried son for holding the same for the benefit of his family after marriage. The assessee married and had begotten a daughter. It was held that the income from the gifted property was assessable in son's hand in the status of an individual till such time as he begot a son. The principle, in *Surjit Lal Chhabda's* case [(1975) 101 ITR 776 (SC)] has also been applied in *CIT v Rajeshwari Prasad* [(1987) 166 ITR 789 (Pat)]."

Page 139: section 2(31):

In line 11 from top, after "(1981) Taxation 60(3)-85 (Mad)", add,—
"; *CIT v Mahendra Jadhavji*, (1984) Taxation 75(1)-26 (Bom)".

Page 144: section 2(31):

After line 9 from top, add,—

"In the facts of the following cases, the income was held assessable in the status of individual and not that of Hindu undivided family:—

- (1) *CIT v Bhai Trilochan Singh*, (1981) 132 ITR 523 (Del) [remuneration received by the *karta* as a director of a company in which funds of the Hindu undivided family were invested for purchase of shares]. Also see, *Rajeshwar Pershad v CIT*, (1982) 138 ITR 771 (Del); *CIT v V. S. Thyagaraja Mudaliar*, (1983) 140 ITR 128 (Mad); *CIT v G. V. Rathaiiah*, (1986) 159 ITR 945 (AP); *Pannalal Kothari v CIT*, (1986) 162 ITR 158 (Raj).
- (2) *CIT v Maharaja Chintamani Saran Nath Sahdeo*, (1982) 133 ITR 658 (Pat) [salary earned as a member of Legislative Council by an holder of an impartible estate].
- (3) *Laxman Das v CIT*, (1982) 138 ITR 628 (All) [remuneration received by the *karta* for managing the business of the firm wherein he was a partner representing his family]. Also see, *CIT v Atma Ram Budhia*, (1984) 146 ITR 240 (Pat—FB); *CIT v Shri Surendra Manilal Mehta*, (1985) 154 ITR 264 (Mad); *CIT v Dwarka Prasad*, (1985) 154 ITR 887 (Pat); *CIT v Chandradip Narain Bararia*, (1985) 156 ITR 658 (Pat); *CIT v K. V. Soma-sundaram*, (1986) 160 ITR 404 (Mad); *Madan Mohan v CIT*, (1986) 160 ITR 450 (Punj).
- (4) *CIT v Basant Singh*, (1983) 140 ITR 937 (Punj) [income earned on the amount falling to the share of the wife of the *karta* at the time of partition of the family property, or on the amount kept apart for marriages of the unmarried daughters].
- (5) *CWT v Smt. T. Yasodamma*, (1984) 146 ITR 445 (AP) [property received by the assessee (widowed daughter-in-law) at a partition taking place after coming into force the Hindu Succession Act between herself and her father-in-law].
- (6) *CIT v K. Satyanarayan Murty*, (1984) 147 ITR 140 (Ori) [partition of HUF properties between the *karta* and his sons, no evidence to the effect that any share was allotted to *Karta's* wife.

Held, the income from property allotted to the *karta* has to be assessed in his individual status].

- (7) *CIT v Dhannamal*, (1984) 148 ITR 141 (MP) [where, on partition, the *karta* as well as his wife are separately allotted their shares in the family property, each is to be separately assessed in individual capacity]. Also see, *Jeetmal Nagri v CWT*, (1984) 148 ITR 139 (MP); *CIT v K. Dhannamal*, (1986) Taxation 82(3)-1 (MP). Contra: *Prem Chand v CIT*; *Sardarilal v CIT*, (1984) 148 ITR 440 (AP).
- (8) *T. Ram Dulari v CIT*, (1980) 150 ITR 569 (Del) [income from property inherited by the widow having no issue].
- (9) *CIT v L. Balasubramaniam*, (1985) 153 ITR 696 (Mad) [grandfather purchased certain properties in the joint names of his three grandsons. Later, the properties were partitioned amongst the three grandsons. Held, each grandson was assessable in his individual capacity in respect of the income from property(ies) allotted to him].
- (10) *CIT v J. K. K. Sundararajan*, (1986) 160 ITR 370 (Mad) [*karta* partner in a firm representing his family consisting of himself and his minor son. On and from the date of partition, the investment in the firm was held to belong to the separated members as tenants-in-common and the share income from the firm was held assessable separately in the hands of each of the members]. Also see *CWT v J. K. K. Angappa Chettiar*, (1979) 116 ITR 456 (Mad). Cf. *CET v Baldeo Dass Rameshwar*, (1985) 22 Taxman 145 (Raj).
- (11) *Bhagwant P. Sulakhe v Digambar Gopal Sulakhe*, AIR 1986 SC 79 [remuneration received by a coparcener, who was appointed as a managing director of a company not in consideration of moneys invested by the family in the company but in view of the services rendered by the coparcener].
- (12) *CIT v Virendra Kumar Gupta*, (1987) 65 CTR (All) 87 [share income from a firm has been held to be assessable individually in the hands of the respective members after a partial partition of the capital invested in the firm has already been recognised by the Income-tax Officer].

Also see, *CIT v Kamal Kumar*, (1986) 26 Taxman 140 (MP).

In the facts of the following cases, the income was held to be assessable in the status of Hindu undivided family:—

- (1) *Govind Sharan v CIT*, (1982) 133 ITR 225 (Raj) [income from business originally started by one of the coparceners with the funds belonging to the family]. Also see, *CIT v Dr. Gurbux Singh*, (1983) 139 ITR 220 (Del).
- (2) *P. M. Shukla v CIT*, (1982) 138 ITR 368 (Bom) [income from business carried on by the *karta* and his brother, funds where to were supplied by the family].

- (3) *Arvind Chandulal v CIT*, (1983) 140 ITR 241 (Guj) [income from property received under a family arrangement by a coparcener living with his widowed mother].
- (4) *CIT v K. S. Subbiah Pillai*, (1984) 147 ITR 87 (Mad) [income from property acquired out of joint family funds. Also, remuneration and commission received by the *karta* as the managing director of a private company floated with HUF funds].
- (5) *Maharajadhiraj Himmat Singhji v CWT*, (1984) 150 ITR 416 (Raj) [barring the deeming provisions as contained in section 27(ii) of the Income-tax Act, 1961, and section 4(6) of the Wealth-tax Act, 1957, the property comprised in an impartible estate is, ordinarily, to be regarded as property of the Hindu undivided family of the holder]. Also see, *Thakur Gopal Singh v CWT*, (1975) 99 ITR 354 (Raj); *CWT v H. H. Maharaja Mayurdhwaj Singhji*, (1982) 136 ITR 278 (Bom); *Bhawani Singh v CED*, (1984) 147 ITR 29 (Raj); *CWT v Thakur Bhairon Singh*, (1984) 147 ITR 32 (Raj); *CWT v Thakur Laxman Singh*, (1984) 150 ITR 421 (Raj).
- (6) *CIT v N. S. Shankara Shetty*, (1985) 152 ITR 536 (Karn) [income from the firm wherein the son of the *karta* became partner after the death of the *karta* who was a partner in his capacity as representing the family].
- (7) *Shri Manmohan Sachdeva v CIT*, (1986) 158 ITR 12 (Del) [as salary to the *karta* representing the family in a firm was assessed as HUF income, the increased salary was also held taxable in the hands of the HUF]. Also see, *Brij Mohan v CIT*, (1986) 158 ITR 14 (Del).
- (8) *D. N. Bhandarkar v CIT*, (1986) 158 ITR 724 (Karn) [salary to divided coparceners from a firm comprised of them wherein family funds were invested].
- (9) *Isawardin Mewalal v CIT*, (1987) Taxation 87(3)-88 (MP) [income from a money-lending business after the death of one of the members of the family was held assessable jointly in the hands of the HUF].

Also see, *R. Iswara Iyer v State of Tamil Nadu*, (1986) 157 ITR 500 (Mad); *CIT v Birdhi Chand*, (1987) 163 ITR 578 (Raj); *Deo Narayan Bhadani v CIT*, (1987) 164 ITR 501 (Pat); *Kishanlal Moolchand v CIT*, (1987) 166 ITR 449 (MP).

Where a particular income is held to be assessable in the hands of the Hindu undivided family, such income cannot be assessed in the hands of the individual [see, *CIT v Vijai Kumar Mishran*, (1985) 45 CTR (All) 325]. Also see, *Sajan Kumar Bhawsingka v CIT*, SLP (Civil) No. 16295 of 1985; (1986) 161 ITR (St.) 133 (SC); *Vasant J. Seth v CIT*, SLP (Civil) No. 6102 of 1980; (1983) 141 ITR (St.) 49 (SC)].

Question of fact.—The question whether in the facts and circumstances of a particular case, the income in question belongs to an individual or a

Hindu undivided family is, ordinarily, a question of fact [*CIT v Kamal Kumar*, (1986) 26 Taxman 140 (MP); *Bhag Mal Chiranji Lal v CIT*, (1987) 163 ITR 721 (Punj)].

In deciding such a question, it is the duty of the Tribunal to give a clear finding in that regard and to indicate the evidence on which such a finding is based [*Tribhovandas Vithaldas v CIT*, (1986) 159 ITR 236 (Guj)].

In *Dr. Ravishanker Tapa v CIT* [(1983) 139 ITR 862 (MP)], in the original assessment, the share income in a firm was assessed as individual income. In the course of reassessment proceedings, it was contended by the assessee that such share income was HUF income and, therefore, not includible in the individual income. It was held that a question of law arose.”.

Pages 144-145: section 2(31):

For paragraphs titled “*Son inheriting self-acquired or separate property of the father—nature of—effect of Hindu Succession Act*”, substitute:

‘Son inheriting self-acquired or separate property of the father—nature of—effect of Hindu Succession Act.—While discussing the subject at pages 144-145 of Volume 1 of Authors’ “*Income-tax Law*”, third edition, the position of law then prevailing was noted with the difference in judicial opinion on the point.

In its judgment dated 16th July, 1986, passed in *CWT v Chander Sen* [(1986) 161 ITR 370 (SC)], it has been authoritatively laid down that when a son inherits the self-acquired or separate property of his father under section 8 of the Hindu Succession Act, 1956, he takes it as his individual property and not as *karta* of his own undivided family. What weighed with the learned judges of the Supreme Court in so holding was that in view of the preamble to the Hindu Succession Act, “it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son’s son but does include son of a pre-deceased son, to say that when son inherits the property in the situation contemplated by section 8, he takes it as *karta* of his own undivided family”. In taking that view, the Supreme Court has affirmed the decision in *CWT v Chander Sen* [(1974) 96 ITR 634 (All)] and has approved decisions in *CIT v Ram Rakshpal Ashok Kumar* [(1968) 67 ITR 164 (All)], *Addl. CIT v P. L. Karuppan Chettiar* [(1978) 114 ITR 523 (Mad—FB)], *Shrivallabhdas Modani v CIT* [(1982) 138 ITR 673 (MP)] and *CWT v Mukund Girji* [(1983) 144 ITR 18 (AP)], and has overruled *CIT v Dr. Babubhai Mansukhbhai* [(1977) 108 ITR 417 (Guj)]. Similar view was taken in *Malchand Thirani & Sons v CIT* [(1980) 121 ITR 976 (Cal)] and *CIT v Ratanlal* [(1982) 138 ITR 680 (MP)]. It may be noted that the decisions in *Radhey Shyam Shri Krishna v CIT* [(1982) 137 ITR 602 (All)]=(1978) Tax LR 1021 (All)] and *CWT v Rameshwarlal Agarwal* [(1987) 164 ITR 743 (MP)] stand impliedly overruled on the point.

It seems clear that in case of devolution of interest in copartenary property under the main section 6 of the Hindu Succession Act, the above

Supreme Court Ruling will not apply. In such case, unless the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative claiming through such female, the interest of the deceased in a *Mitakshara* coparcenary property shall devolve under the main section 6 by survivorship upon the surviving members of the coparcenary and not in accordance with section 8. If, however, the deceased had left him surviving a female heir specified in Class I or a person claiming through such female relative, the proviso to section 6 clarifies that in such a case the interest of the deceased in the *Mitakshara* coparcenary property, in case of intestate succession, devolve as per the provisions of section 8 and not by survivorship.

At the same time, *Explanation 2* to section 6 clarifies that nothing contained in the proviso to that section is to be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.’

Page 145: section 2(31):

In line 21 from top, after “115 ITR 168 (Bom)”, *add*,— “; *CWT v Sampatrai Bhutoria & Sons*, (1982) 137 ITR 868 (Cal); *CIT v Shambhu Ram Soni*, (1982) 138 ITR 373 (Del); *CIT v M. Balasubramaniam*, (1981) 132 ITR 529 (Mad); *Dr. Prakash Tiwari v CIT*, (1984) 148 ITR 474 (MP); *CWT v M. Balaramakrishna*, (1986) 159 ITR 832 (AP); *CIT v Maharaja Bahadur Singh*, (1986) 162 ITR 343 (SC); *CWT v Narayandass Sadani*, (1967) 65 ITR 137 (Cal); *A. V. N. Jagga Row v CIT*, (1987) 166 ITR 862 (AP) [holding, on facts, that the property so received was assessable in the hands of the individual]”.

In lines 24-25 from top, after “(1981) Tax LR 646 (Del)”, *add*,— “=(1983) 139 ITR 48 (Del); *Satyendra Kumar v CIT*, (1983) 140 ITR 840 (Mad), special leave petition granted by the Supreme Court: (1984) 148 ITR (St.) 2; *CIT v Radhambal Ammal*, (1985) 153 ITR 440 (Mad); *M. H. Narayanacharyulu v CED*, (1970) 77 ITR 594 (AP); *Addl. CWT v Jambu Kumar Kasliwal*, (1983) 143 ITR (St.) 68, special leave petition granted by the Supreme Court [holding, on facts, that the property so received was assessable in the hands of the Hindu undivided family]”.

Page 145: section 2(31):

Before the paragraph titled “*No presumption of joint family business*”, *add*,—

“Sole surviving coparcener—nature of property, whether individual or HUF?—A person who for the time being is the sole surviving coparcener is entitled to dispose off the coparcenary property as if it were his separate or individual property. He may sell or mortgage the property without legal necessity or he may make a gift of it. If a son is subsequently born to him or adopted by him, the alienation, whether it is by sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienation made

by his father before he was born or begotten [*Mulla's Hindu Law*, 15th Edn., para 257 at page 345]. In *CIT v Admiralty Flats Motel* [(1982) 133 ITR 895 (Mad)], one G acquired certain properties on partition of the bigger Hindu undivided family as the single coparcener of the smaller Hindu undivided family consisting of himself, his wife and two minor daughters. Out of such properties, he gifted some of these to his wife and the two daughters. It was held that so long as G did not have any male issue, the properties received on partition could be dealt with by him as if these were his separate properties. Therefore, the gifts made by him were valid. Also see, *M. S. C. Rajah v CGT*, (1982) 134 ITR 1 (Mad); *Anilkumar B. Laskari v CIT*, (1983) 142 ITR 831 (Guj); *CIT v Anil J. Chinai*, (1984) 148 ITR 3 (Bom). Cf. *CED v Smt. Kalawati Devi*, (1980) 125 ITR 762 (All); *Ramratan v CED*, (1983) 142 ITR 863 (MP—FB); *P. Amirthavalli v CED*, (1987) 164 ITR 63 (Mad).

However, in *Rai Satya Vrata v CWT: Rai Satya Vrata v CIT* [(1983) 141 ITR 634 (All)], on the death of the father the family property devolved on the son R, who was then the sole surviving coparcener. Later, R begot a son and thereafter he made a gift of the property to his wife and children. It was held that the gift was not valid. Income from such property was held assessable in the hands of the Hindu undivided family consisting of R, his wife and his sons.”.

Page 146: section 2(31):

On the subject “*No presumption of joint property*”, reference may also be made to *Deo Narayan Bhadani v CIT* [(1987) 164 ITR 501 (Pat)].

Page 147: section 2(31):

Lines 24-25 from top: The decision in *CIT v Maharaja Chintamani Saran Nath Sahdeo*, (1980) 15 CTR (Pat) 300 has also been reported at (1982) 133 ITR 658 (Pat). This decision has been held to be no longer good law on another point in *CIT v Maharaja Chintamani Saran Nath Sah Deo*, (1986) 157 ITR 358 (Pat). Also see, *CIT v Harish Chandra Gupta*, (1981) 132 ITR 799 (Ori).

Page 148: section 2(31):

In line 32 from top, after “123 ITR 658 (Punj)” add,— “; *K. A. Karim & Sons v ITO*, (1984) 149 ITR 172 (Ker); *CIT v Bhupender Singh Atwal*, (1983) 140 ITR 928, 936 (Cal)” [holding that for the purposes of income-tax, a firm is distinct and separate entity from the persons who compose it].

Page 149: section 2(31):

Before the last two lines, add,—

“In the context of the provisions of the Kerala General Sales Tax Act, 1963, the Supreme Court, in *Dy. CST v K. Kelukutty* [(1985) 155 ITR 158 (SC)], have disapproved the approach adopted by the High Courts in

Vissonji Sons & Co. v CIT [(1946) 14 ITR 272 (Bom)]; *Jesingbhai Ujamshi v CIT* [(1950) 18 ITR 23 (Bom) & (1955) 28 ITR 454 (Bom)]; *R. N. Oswal Hosiery and Mahabir Woollen Mills v CIT* [(1968) 70 ITR 843 (Punj)]; and *CIT v G. Parthasarathy Naidu & Sons* [(1980) 121 ITR 97 (AP—FB)].

The Supreme Court has laid down that a partnership is the relationship between those persons who constitute the partnership. The relation is founded in the agreement between them. The foundation of a partnership and, therefore, of a firm is a partnership agreement. A partnership agreement is the source of a partnership; it also gives expression to the other ingredients defining the partnership, specifying the business agreed to be carried on, the persons who will actually carry on the business, the shares in which the profits will be divided, and several other considerations which constitute such an organic relationship. It is permissible to say that a partnership agreement creates and defines the relation of partnership and, therefore, identifies the firm. If that conclusion be right, it is only a further step to hold that each partnership agreement may constitute a distinct and separate partnership and, therefore, distinct and separate firms. That is not to say that a firm is a corporate entity or enjoys a juristic personality in that sense. The firm name is only a collective name for the individual partners. But each partnership is a distinct relationship. The partners may be different and yet the nature of the business may be the same, the businesses may be different and yet the partners may be the same. An agreement between the partners to carry on a business and share its profits may be followed by a separate agreement between the same partners to carry on another business and share the profits therein. The intention may be to constitute two separate partnerships and, therefore, two distinct firms. Or to extend merely a partnership originally constituted to carry on one business, to the carrying on of another business. It will all depend on the intention of the partners. The intention of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance and other incidents of the respective businesses [*Dy. CST v K. Kelukutty*, (1985) 155 ITR 158, 164-65 (SC)].

Also see, *CIT v C. A. Ouseph & Sons*, (1985) 154 ITR 598 (Ker—FB).

In *CIT v V. Veerinaidu & Sons* [(1987) Tax LR 787 (AP)], it has been held that the mere circumstance that one partnership firm lent funds to another partnership firm cannot lead to the conclusion that both the partnership firms are the same.”.

Page 151: section 2(31):

After serial No. 17, add,—

“18. *T. Periaswamy Gounder v Ag. ITO*, (1982) 134 ITR 155 (Mad) [common exploitation of the asset concerned for their common benefit essential. Mere fact of common management insufficient].

19. *B. T. Manjappa Gowda v State of Karnataka*, (1984) 150 ITR 303 (Karn) [Mere management of the property by one person and the distribution of the income amongst the divided members are neither conclusive nor determinative].”.

Page 154: section 2(31):

After serial No. (16), giving illustrations of cases where association of persons was found to exist, *add*,—

- “(17) Two persons purchased a piece of land in joint names and jointly constructed a cinema theatre on it. Theatre was leased out. Income from lease was held assessable in the hands of an AOP [*M. K. Dar v CIT*, (1982) 138 ITR 801 (All)].
- (18) Members of an alleged firm which is found to be not a genuine firm [*Munilal Shivnarain Kothari v CIT*, (1984) 149 ITR 567 (Raj)] or which is found to be not valid [*Sudhansu Kumar Bose v CIT*, (1984) 150 ITR 626 (Cal)].
- (19) Group of persons constituting the All India Hindu Mahasabha in respect of income from property belonging to the Sabha [*CIT v All India Hindu Mahasabha*, (1983) 140 ITR 748 (Del)].
- (20) Erstwhile partners of a dissolved firm in respect of lease rent of a theatre let out during the continuance of the firm [*CIT v Kalpana Theatres*, (1985) 152 ITR 576 (Mad)].
- (21) Joint activity of two persons, in smuggling and in disposing of the smuggled articles [*Addl. CIT v M. V. Moosa*, (1985) 153 ITR 360 (Mad)].
- (22) Joint purchase and sale of land at profit by four persons [*Smt. Parvathi Devi v CIT*, (1987) 164 ITR 675 (AP)].
- (23) Five persons joined together under an agreement for betting events in horse racing [*CIT v Friends Enterprises*, (1987) 34 Taxman 411 (AP)].

Also see, *CIT v C. D. Karaka*, (1983) 13 Taxman 1 (Guj).”.

Page 155: section 2(31):

After serial No. (13), giving illustrations of cases where no association of persons was found to exist, *add*,—

- “(14) *Karta* partner representing the family—partition of the family and the *karta* continuing as a partner—erstwhile members do not constitute an AOP in respect of share income from the firm [*Narayan Nepak v CIT*, (1982) 136 ITR 133 (Ori); *CIT v Indramohan Sharma*, (1982) 138 ITR 699 (Bom); *CIT v Nemkumar Porwal*, (1984) 148 ITR 30 (Bom); *Shantikumar Maganlal Jain v CIT*, (1984) 148 ITR 11 (Bom)].
- (15) Promoters of a society or a company ordinarily do not form an AOP in respect of interest earned on money accumulated and deposited in bank, etc. [*CIT v Y. S. Desale*, (1982) 137 ITR 117 (Bom)].

- (16) Single transaction of purchase and sale of a piece of land by three ladies without any evidence of a joint venture [*CIT v Smt. Saraswati Bai*, (1982) 137 ITR 656 (Punj)].
- (17) Property purchased in joint names of partners of a firm was sold—partners held not to constitute an AOP in respect of the profit earned [*Abdul Kareemia & Bros. v CIT*, (1984) 145 ITR 442 (AP)].
- (18) Property purchased by husband and wife in definite shares under separate sale deeds—property was leased out to a tenant under a single lease deed—rent distributed according to appropriate share [*CIT v K. R. Kanakarathinam*, (1984) 146 ITR 364 (Mad)].
- (19) Legal heirs of a Mahomedan having specified shares in the inherited property [*C. M. Aleemullakhan v C. Ag. IT*, (1984) 148 ITR 696 (Karn). Also see, *CIT v Mrs. Moktar Begum*, (1986) 162 ITR 402 (Cal)].
- (20) One member merely managing the properties after partition amongst members of a family by metes and bounds—income from such properties was distributed amongst divided members [*B. T. Manjappa Gowda v State of Karnataka*, (1984) 150 ITR 303 (Karn)].

Also see, *CIT v Khalid Mehdi*, (1987) 165 ITR 685 (AP); *CIT v M. S. Menon*, (1987) 168 ITR 125 (Mad).”.

Page 157: section 2(31):

After line 9 from top, *add*,—

“**Illustrative cases.**—In the facts of the following cases, it was held that the assessee was assessable in the status of ‘body of individuals’:

- (1) *N. P. Saraswathi Ammal v CIT*, (1982) 138 ITR 19 (Mad), special leave petition granted by the Supreme Court: (1985) 156 ITR (St.) 42.
- (2) *CIT v Bangalore Turf Club Benevolent Fund*, (1984) 145 ITR 323 (Karn).
- (3) *Meera & Co. v CIT*, (1987) 166 ITR 76 (Punj), special leave petition granted by the Supreme Court: (1986) 159 ITR (St.) 109.
- (4) *CWT v Rashtriya Swayam Sewak Sangh*, (1987) 63 CTR (Bom) 329.

On the other hand, in the facts of the following cases, it was held that the assessee could not be assessed in the status of ‘body of individuals’:

- (1) *CIT v Smt. Vimla Lal*, (1983) 143 ITR 16 (All), special leave petition dismissed by the Supreme Court: (1985) 143 ITR (St.) 11.
- (2) *CGT v Aleixo P. Velho*, (1983) 143 ITR 372 (Bom).
- (3) *CIT v Pabbati Shankaraiah*, (1984) 145 ITR 702 (AP).
- (4) *CIT v A. P. Parukutty Mooppilamma*, (1984) 149 ITR 131 (Ker).

- (5) *Addl. CIT v Mr. & Mrs. Valentino F. Pinto*, (1984) 150 ITR 408 (Bom).
- (6) *Addl. CIT v Surendra Poi Anglo*, (1984) Taxation 75(1)-18 (Bom).
- (7) *CIT v V. Pattabiraman*, (1987) 164 ITR 786 (Mad).".

Page 158: section 2(31):

After line 5 from top, *add*,—

"Question of fact.—The question whether two or more persons constitute an association of persons is, ordinarily, a question of fact [*CIT v S. B. Sugar Mills*, (1985) 156 ITR 273 (All)].

But in *CIT v Bhoormal Chittarmal* [(1986) 158 ITR 751 (Raj)], it was held that the question whether there was a joint venture or a partnership is a question of law.

In the facts of *CIT v Model Jharia Colliery Co.* [(1987) 163 ITR 565 (Pat)], the matter was sent back to the Tribunal for finding out whether on the basis of the clauses of the lease deed, it could be said that the assessee was carrying on the business or the assessee was to be assessed in the status of an AOP.".

Page 159: section 2(31):

Before the central heading "*Principal officer*", *add*,—

"In *Bar Council of Uttar Pradesh v CIT* [(1983) 143 ITR 584, 589-90 (All)], it has been held that by virtue of section 5 of the Advocates Act, 1961, the Bar Council of a State is a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable. The Bar Council may sue or be sued by the name by which it is known. It is clearly a juristic person and is covered by the expression 'artificial juridical person'.".

Pages 160-61: section 2(35):

Lines 32-33 from top of page 160 and lines 4-5 from top of page 161:

The decision in *Hungerford Investment Trust Ltd. v ITO* [(1971) 106 ITR 649 (Cal)] has been affirmed in *Hungerford Investment Trust Ltd. v ITO*, (1983) 142 ITR 601 (Cal).

Page 161: section 2(35):

After line 8 from top, *add*,—

"In the facts of *M. R. Pratap v ITO* [(1984) 149 ITR 798 (Mad), special leave petition granted by the Supreme Court: (1986) 157 ITR (St.) 31], it has been held that a managing director of a company cannot be held liable under section 276B unless the Income-tax Officer has served a notice on him under section 2(35)(b) and informed him of his intention to treat him as the principal officer of the company.".

Page 167: section 3:

After line 6 from top, *add*,—

“For the concept of ‘source’, reference may also be made to *Sterling Foods v CIT*, (1984) 150 ITR 292 (Karn).”.

Page 167: section 3:

At the end of line 11 from the bottom, *add*,—“Also see, *CIT v Bharat Builders & Engineers*, (1982) 29 CTR (All) 267, holding that a reconstituted firm may adopt a previous year different from that of the original firm.”.

Page 168: section 3:

After line 15 from top, *add*,—

“Exercising an option involves a positive act on the part of the assessee who must be aware of his right. He must then consciously opt for a previous year other than the financial year. Merely mentioning the year as commencing from a particular date on the chalan for payment of advance tax cannot be treated as an exercise of such option [Cf. *CST v Brihan Maharashtra Sugar Syndicate Ltd.*, (1987) 165 ITR 217, 223-24 (Bom); *CST v Brihan Maharashtra Sugar Syndicate Ltd.*, (1987) 165 ITR 275 (Bom)].

At the same time, there is no particular mode contemplated by law of exercising this option and whether in a given case an option has been exercised or not is essentially a matter of inference [*CIT v B. C. Kothari*, (1986) 160 ITR 27, 31-32 (Mad)].

In *CIT v Smt. Renu Khanna* [(1986) 160 ITR 855 (Del)], the assessee recorded the transactions of sales resulting in capital gains in a note book. It was held that the assessee has exercised her option under section 3(1)(b) to have a previous year of her choice.”.

Page 168: section 3:

Before the paragraph titled “*Previous year for capital gains*”, *add*,—

“**Previous year in respect of house property income.**—Where an assessee has maintained proper accounts of his income from house property, he is entitled to adopt a previous year different from the financial year [*Addl. CIT v G. S. Hari Chand Kapoor & Sons*, (1985) 154 ITR 202 (Bom)].”.

Page 169: section 3:

After line 2 from top, *add*,—

“In *CIT v Nellai Murasu Pr. Ltd* [(1985) 154 ITR 355 (Mad)], the gains arising on the sale of land were shown in the books of account maintained for the business. It was held that the capital gains were chargeable in the assessment year relevant to the previous year adopted for the business income.

However, in *CIT v India Sea Foods* [(1987) 59 CTR (Ker) 84], the sale took place on 3-3-1973 and in respect of business income the assessee

had adopted calendar year as its previous year. In the return for the assessment year 1973-74, the assessee included the capital gains arising from the said sale. The department contended that the capital gains were to be assessed for the assessment year 1974-75. It was held, negating the department's contention, that the capital gains were to be assessed in assessment year 1973-74, because in respect of such gains the assessee had not exercised any option to adopt a different previous year and, therefore, the financial year was assessee's previous year in respect of such gains."

Page 172: section 3:

At the end of paragraph titled "'Setting up' of business—meaning of", add,—*"Also see, Addl. CIT v Speciality Paper Ltd., (1982) 133 ITR 879 (Guj)."*

Page 174: section 3:

At the end of the paragraph titled *"Previous year for share of profit—section 3(1)(f)"*, add,—

"Section 3(1)(f) has its own operation and that cannot be curtailed with reference to the provisions of section 3(1)(c). Both provisions are independent of each other to work in their respective spheres [CWT v P. R. Shanmugam, (1985) 153 ITR 330, 337 (Mad)]."

Page 174: section 3:

Lines 6 and 7 from the bottom: Special leave petition has been granted by the Supreme Court against the decision in *CIT v Lachmandas Veerbhandas*, (1981) 128 ITR 606 (Karn) [*CIT v Lachman Das Veerbhan Das*: SLP (Civil) No. 3248 of 1982: (1984) 149 ITR (St.) 129 (SC)].

Page 175: section 3:

In line 13 from the bottom, after *"59 ITR 57 (AP)"*, add,—*"; Jamuna Prasad Gur Prasad v CIT, (1986) 159 ITR 986 (All)"* [holding that consent can be accorded by the Income-tax Officer by taking a previous year for a period exceeding twelve months].

Page 175: section 3:

Before the paragraph titled *"Implied consent"*, add,—

"If an assessee dies with the consequence that the business carried on by the assessee comes to a close, it is not a case of change of previous year within the meaning of section 3(4). Change of previous year implies a deliberate or voluntary change at the instance of the assessee. When an assessee dies or where an assessee-firm undergoes a civil death, it no longer has any volition in respect of the change of the previous year. The business comes to an automatic end and the books of account have got to be closed ending with the period when the business closes [Gauri Sahai Ghisa Ram v CIT, (1979) 120 ITR 338, 340-41 (All)]."

Page 175-6: section 3:

At the end of paragraph titled "*Implied consent*", *add,—*

"In *Ratan Lal Ved Prakash v CIT* [(1983) 144 ITR 135 (All)], no formal application was filed by the assessee seeking for change of previous year. But a return was filed on the basis of the changed previous year and assessment was made accordingly. It was held that there was an implied consent."

Page 176: section 3:

At the end of the paragraph titled "*Revocation of granted permission not possible*", *add,—*

"In *CIT v Hari Prosad Lohia* [(1983) 143 ITR 276 (Cal)], the assessee was given permission to change the previous year by the competent Income-tax Officer. That order was communicated to the assessee and had become final. It was held that the successor-in-office could not summarily reverse that decision while passing the order of assessment."

Page 177: section 3:

After line 7 from the top, *add,—*

"*Hearing needed in case of refusal.*—Refusal of consent to the change of the previous year can have serious consequences for the assessee. In that view of the matter, it is imperative that an order refusing consent or even an order granting consent on conditions should not be passed without first hearing the assessee [*Bennett Coleman & Co. Ltd. v ITO*, (1983) 141 ITR 239, 246 (Bom)].

However, according to the Gauhati High Court, an assessee cannot claim as of right an opportunity of being heard before any order withholding consent for the change in the previous year is passed by the Income-tax Officer [*Assam Frontier Tea Ltd. v IAC*, (1987) 164 ITR 253 (Gauh)].

Orders amenable to revision.—The grant of consent or the refusal to do so under section 3(4) of the Act amounts to an order within the ordinary meaning of that word. The grant or refusal is made on the application of the assessee. The exercise of discretion is required. Consent may be granted subject to such conditions as the Income-tax Officer may think fit to impose. This calls for an application of mind. The accord of sanction subject to conditions must be explained in a speaking order as must the refusal of consent. The grant or refusal of consent would, therefore, be an order and would fall within the scope of section 263 [*Bennett Coleman & Co. v ITO*, (1983) 141 ITR 239, 245 (Bom)].

A revision petition under section 264 may also lie against such order.

Appeal against an order under section 3(4) not permitting change of previous year.—See, at page 4219 of Vol. 5."

Page 177: section 3:

At the end of line 13 from top, *add,—*"The above view of a single judge of the Delhi High Court did not find favour with the Gauhati High Court

in *Assam Frontier Tea Ltd. v IAC* [(1987) 164 ITR 253, 259, 260 (Gauh)], which held that orders unsupported by reasons are logically incomplete.”.

Page 177: section 3:

At the end of paragraph titled “*Exercise of discretion—interference by High Court*”, add,—“Also see, *Assam Frontier Tea Ltd. v IAC*, (1987) 164 ITR 253 (Gauh).”.

Page 177: section 3:

Before the paragraph titled “*Length of a previous year*”, add,—

“*Question of fact*.—The question whether consent had been granted or not is, ordinarily, a question of fact [*CIT v United Trading Co.*, (1987) 163 ITR 302 (Punj)].”.

Page 177: section 3:

Line 4 from the bottom: For “consert”, read “consent”.

Page 178: section 3:

At the end of line 2 from top, add,—“On the point of length of a previous year, reference may also be made to *Khalsa Provisions v CIT* [(1982) 135 ITR 817 (Del)] and *Assam Frontier Tea Ltd. v IAC* [(1987) 164 ITR 253 (Gauh)].”.

Page 178: section 3:

In line 28 from top, after “130 ITR 129, 136-7 (Cal)”, add,—“; *CIT v Bihar Cotton Mills Ltd.*, (1986) 160 ITR 275 (Pat); *Addl. CIT v Hasmat Rai Raj Pal*, (1987) 167 ITR 794 (All); *CIT v R. Dalmia*, (1986) 157 ITR 221 (Del); *Jainarayan Babulal v CIT*, (1987) Tax LR 1109 (Bom)” [holding that the previous year under the 1922 Act in respect of income from undisclosed source was the financial year].

Page 179: section 3:

At the end, add,—“The decision in *Baladin Ram v CIT* [(1969) 71 ITR 427 (SC)] has been applied by the Calcutta High Court in *CIT v Orissa Steel Corporation Pr. Ltd* [(1983) 144 ITR 662 (Cal)].”.

Page 181: section 4:

Before the paragraph titled “*Three stages in imposition of a tax*”, add,—

“**Tax, interest and penalty—different concepts.**—See, at page 3201 of Vol. 3. Also see, *Chemmeens v ITO*, (1984) 149 ITR 233 (Ker).”.

Moral sanction behind taxation laws.—There is behind taxation laws as much moral sanction as behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that it stands on no less a moral plane than honest payment of taxation. The proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or

liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. A hint of this approach is to be found in the judgment of Desai J. in *Wood-Polymer Ltd., In re & Bengal Hotel Limited, In re* [(1977) 47 Comp Cas 597 (Guj)=(1977)109 ITR 177 (Guj)], where the learned judge refused to accord sanction to the amalgamation of companies as it would lead to avoidance of tax.

It is neither fair nor desirable to expect the legislature to intervene and take care of every device and scheme to avoid taxation. It is up to the court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of "emerging" techniques of interpretation to expose the devices for what they really are and to refuse to give judicial benediction [*McDowell & Co. Ltd. v CTO*, (1985) 154 ITR 148, 160-1 (SC)].

Colourable devices not to form part of tax planning.—Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges [*McDowell & Co. Ltd. v CTO*, (1985) 154 ITR 148, 171 (SC)].

Evil consequences of tax avoidance.—The evil consequences of tax avoidance are manifold. First, there is substantial loss of much needed public revenue, particularly in a welfare state like ours. Next, there is the serious disturbance caused to the economy of the country by the piling up of mountains of blackmoney, directly causing inflation. Then there is "the large hidden loss" to the community (as pointed out by Master Sheatcroft in 18 Modern Law Review 209) by some of the best brains in the country being involved in the perpetual war waged between the tax-avoider and his expert team of advisers, lawyers and accountants on the one side and the tax-gatherer and his perhaps not so skilful advisers on the other side. Then again there is the "sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it". Last, but not the least, is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guideless, good citizens from those of the "artful dodgers" [*McDowell & Co. Ltd. v CTO*, (1985) 154 ITR 148, 160 (SC), following the observations in *W. T. Ramsay Ltd. v IRC*, (1982) AC 300=(1981) 2 WLR 449 (HL), *IRC v Burmah Oil Co. Ltd.*, (1982) Simon's Tax Cases 30 and *Furniss v Dawson*, (1984) 1 All ER 530=2 WLR 226 (HL) and disapproving the observations on tax avoidance in *CIT v A. Raman & Co.*, (1968) 67 ITR 11 (SC) and *CIT v B. M. Kharwar*, (1969) 72 ITR 603 (SC)]. Also see, *Neroth Oil*

Mills Co. Ltd. v CIT, (1987) 166 ITR 418 (Ker); *CIT v Smt. Minal Rameshchandra*, (1987) 167 ITR 507, 539-41 (Guj).

At the same time, it may be noted that the Supreme Court, in *McDowell & Co. Ltd. v CTO* [SLP (Civil) Nos. 8140-8142 of 1986: (1987) 165 ITR (St.) 227], has granted special leave against a judgment of the Andhra Pradesh High Court which had followed *McDowell's* case [(1985) 154 ITR 148 (SC)].

Page 181: section 4:

At the end of the paragraph titled "*Three stages in imposition of a tax*", add,—

"In a statute which levies tax, it is mandatory not only to prescribe the assessing authority but to provide for the machinery for adjudication of disputes regarding the tax [*Jaswant Theatre v State of Punjab*, (1987) 168 ITR 38, 42 (Punj)].".

Page 181: section 4:

In line 14 from the bottom, after "32 ITR 190 (SC)", add,—"; *Orient Club v CWT*, (1982) 136 ITR 697, 712 (Bom); *ITO v A. V. Thomas & Co.*, (1986) 160 ITR 818, 821 (Ker); *Banamali Tea Estate v State of Assam*, (1986) 160 ITR 430 (Gauh)" [dealing with "*Subject, when can be taxed?*"]].

Page 182: section 4:

In line 17 from the bottom, after "82 ITR 570, 575 (SC)", add,—"; *Mrs. M. P. Gnanambal v CIT*, (1982) 136 ITR 103 (Mad); *CIT v Indian Hotels Co. Ltd.*, (1983) 141 ITR 343, 351 (Bom)".

Page 182: section 4:

In lines 11 and 10 from the bottom, after "94 ITR 370, 374 (Mys)", add,—"; *Karnataka Forest Plantations Corpn. Ltd. v CIT*, (1985) 156 ITR 275 (Karn)".

Page 182: section 4:

Before the paragraph titled "*Ambiguity to be resolved in favour of the assessee*", add,—

"Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction [*CIT v J. H. Gotla*, (1985) 156 ITR 323, 339-40 (SC)]. Also see, *CIT v Malayala Manorama & Co. Ltd.*, (1983) 143 ITR 29 (Ker).

In interpreting the procedural provisions of an Act, fairness and justice should be the approach and even in a fiscal statute, equity should prevail wherever the language permits [*CST v Auraiya Chamber of Commerce*, (1987) 167 ITR 458, 464 (SC)].

It is well-settled that no tax can be imposed or excluded by analogy [*Venkataswara Stainless Steel & Wire Industries v Union of India*, (1987) Tax LR 1915, 1917 (Mad)].

Essential components entering into the concept of a tax.—The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity [*Govind Saran Ganga Saran v CST*, (1985) 155 ITR 144, 148 (SC)].

Principle of strict interpretation.—The provisions of a taxing statute have ordinarily to be construed strictly [*Jaswant Singh v CIT*, (1986) 160 ITR 949, 951 (Punj); *CIT v Birla Bros. Pr. Ltd.*, (1982) 133 ITR 373 (Cal); *CIT v Plastica Moulders Pr. Ltd.*, (1982) 134 ITR 114 (Cal); *Bilaspur Mills & Industries Ltd. v CIT*, (1982) 135 ITR 496, 499 (Cal); *CIT v Andhra Oil & Fertilisers Co.*, (1983) 143 ITR 661, 668 (AP). Also see, *CIT v Bhupender Singh Atwal*, (1983) 140 ITR 928, 936 (Cal)].

That strict construction principle is applicable only to taxing provisions, such as charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions [*CIT v National Taj Traders*, (1980) 121 ITR 535, 545 (SC); *CIT v Vakharia Cotton Traders*, (1986) 161 ITR 441, 443 (Guj); *CIT v K. S. Vaidyanathan*, (1985) 153 ITR 11, 27 (Mad—FB); *J. P. Sharma & Sons v CIT*, (1985) 151 ITR 138, 143 (Raj); *Gursahai Saigal v CIT*, (1963) 48 ITR (SC) 1, 5].

At the same time, the strict construction principle does not rule out the application of the principle of reasonable construction to give effect to the purpose or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids as are permissible under the law [*Shree Sajjan Mills Ltd. v CIT*, (1985) 156 ITR 585, 603 (SC)].

Absurdity to be avoided.—If strict literal construction leads to an absurd result, that is, a result not intended to be sub-served by the object of the legislation ascertained from the scheme of the legislation, then, if another construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction [*CIT v J. H. Gotla*, (1985) 156 ITR 323, 339 (SC)].”.

Page 183: section 4:

In lines 11-12 from the top, after “122 ITR 283, 286 (Mad)”, add,—“; *CIT v Pohop Singh Rice Mill*, (1981) 132 ITR 390, 397 (Ori); *Patel Engg. Co. Ltd. v CIT*, (1982) 135 ITR 49, 54 (Bom); *Estate of late H. H. Rajkuerba, Dowager Maharani Saheb of Gondal v CIT*, (1982) 135 ITR 393, 419 (Karn); *Bilaspur Spng. Mills & Industries Ltd. v CIT*, (1982) 135 ITR 496, 499 (Cal); *CIT v Saraswati Industrial Syndicate Ltd.*, (1982) 136 ITR 366, 371 (Punj); *Arvind Boards & Paper Products Ltd. v CIT*, (1982) 137 ITR 635, 641 (Guj); *CIT v Swadeshi Match Co.*, (1983) 139 ITR 833, 841 (Bom); *CIT v Bhupender Singh Atwal*, (1983) 140 ITR 928, 936 (Cal); *CIT v Belapur Sugar & Allied Industries Ltd.*, (1983) 141 ITR 404, 412 (Bom); *CIT v Bharat Nidhi Ltd.*, (1983) 141 ITR 740, 744 (Del); *CIT v Badri Prasad Agarwal*, (1983) 142 ITR 353, 355 (MP); *C. Arunachalam v CIT*, (1985) 151 ITR 172, 180 (Karn—FB); *CIT v Saroop Krishan*, (1985) 153 ITR 1, 10 (Punj); *Kanti Lal Purshottam & Co. v CIT*, (1985) 155 ITR 519, 528 (Raj); *Hindustan Motors Ltd. v CIT*, (1985) 156 ITR 223, 229 (Cal); *CIT v J. K. Hosiery Factory*, (1986) 159 ITR 85, 90 (SC); *Mangat Ram v Govt. of Jammu & Kashmir*, (1983) Tax LR 3000 (J & K); *New Nagpur Copra Industries v State of Maharashtra*, (1985) 60 STC 380 (Bom)” [holding that ambiguity has to be resolved in favour of the assessee].

Page 183: section 4:

In lines 18-19 from top, after “127 ITR 287, 301 (All)”, add,—“; *CIT v Ravi Talkies*, (1982) 137 ITR 176 (Ori); *Alladi Venkateswarlu v Govt. of AP*, (1978) 41 STC 394 (SC)” [holding that where the provision is clear, it is not open to the court to treat the situation as a case of ambiguity and read its own opinion into the legislation].

Page 185: section 4:

At the end of the page, add the following in the table:

| Assessment year | Previous year | | | | | |
|-----------------|---------------|----------|----------|-----------------|-------------------|--------------------------------|
| | Calendar | Dewals | year | Ram nawami year | Akshayatriya year | Financial year |
| | | From | To | From | To | From To |
| 1983-84 | 1982 | 28-10-81 | 15-11-82 | 2-4-82 | 20-4-83 | 6-5-81 25-4-82 1-4-82 31-3-83 |
| 1984-85 | 1983 | 16-11-82 | 4-11-83 | 21-4-83 | 9-4-84 | 26-4-82 14-5-83 1-4-83 31-3-84 |
| 1985-86 | 1984 | 5-11-83 | 24-10-84 | 10-4-84 | 29-3-85 | 15-5-83 3-5-84 1-4-84 31-3-85 |
| 1986-87 | 1985 | 25-10-84 | 12-11-85 | 30-3-85 | 17-4-86 | 4-5-84 22-4-85 1-4-85 31-3-86 |
| 1987-88 | 1986 | 13-11-85 | 1-11-86 | 18-4-86 | 6-4-87 | 23-4-85 11-5-86 1-4-86 31-3-87 |
| 1988-89 | 1987 | 2-11-86 | 22-10-87 | 7-4-87 | 25-3-88 | 12-5-86 30-4-87 1-4-87 31-3-88 |
| 1989-90 | 1988 | 23-10-87 | 9-11-88 | 26-3-88 | 14-4-89 | 1-5-87 18-4-88 1-4-88 31-3-89 |

Page 186: section 4:

At the end of paragraph titled "*Charging provisions and machinery provisions—inter-relation*", *add*,—"The machinery provisions cannot be interpreted in such a way as to restrict the scope of the charging section [*CWT v Pachigolla Narasimha Rao*, (1982) 134 ITR 640, 644 (AP)]. As a matter of fact, the courts are expected to construe the machinery sections in such a manner that a charge to tax is not defeated [*Associated Cement Co. Ltd. v CTO*, (1981) Tax LR 3057, 3073 (SC)=48 STC 466 (SC)].".

Page 186: section 4:

In lines 30-31 from top, after "128 ITR 294, 299 (SC)", *add*,—""; *Evans Fraser & Co. Ltd. v CIT*, (1982) 137 ITR 493 (Bom)" [holding that the charging section and the computation provisions together constitute an integrated code and in a case to which the computation provisions cannot apply, the charging section will not also apply].

Page 186: section 4:

In the last line, after "147 (Mad)", *add*,—"Cf. *Indian Cable Co. Ltd. v State of Bihar*, (1985) 156 ITR 579 (Pat)" [holding that the liability to pay tax does not depend upon the assessment].

Page 188: section 4:

After line 8 from top, *add*,—

"The representations either of the Government or of the authorities under the statute cannot give rise to a situation of estoppel against the statute. The law is clear that estoppel is not available to be pleaded against an Act [Cf. *Rishabh Kumar & Sons v State of U.P.*, (1987) 66 STC 222, 224 (SC)].".

Page 189: section 4:

At the end of line 15 from top, after "706, 718 (Bom)", *add*,—""; *Karnataka Forest Plantations Corpn. Ltd. v CIT*, (1985) 156 ITR 275, 277 (Karn); *Prominent Motors (India) v CIT*, (1983) 140 ITR 326 (Del)" [holding that each year is a self-contained separate period].

Page 191: section 4:

In line 13 from top, after "63 ITR 416 (SC)", *add*,—""; *CIT v Jagdish Lal & Sons*, (1986) 157 ITR 620 (All)" [holding that the rule of *res judicata* is applicable in dealing with an order recognising partition made in an earlier year].

For other cases on *res judicata*, see, page 2827 of Vol. 3 and *addendum* to that page.

Page 192: section 4:

At the end of paragraph titled "*Civil Court decisions—effect on income-tax proceedings*", *add*,—"The decision in *Thobhandas' case* [(1979) 109 ITR 296 (Guj)] has been followed in *Keshavlal Punjaram v CIT* [(1986)

141 ITR 466 (Guj)]. Similar view has also been taken by the Madras High Court in *V. Datchinamurthy v ADI* [(1984) 149 ITR 341 (Mad)].

However, the Bombay High Court, in the facts of *CIT v C. K. Thakore* [(1982) 136 ITR 464, 472 (Bom)], has taken the view that the rights and liabilities under a contract between the assessee and a third party if and as determined by a competent civil court cannot be overlooked or ignored while determining the legal nature of the receipt in the hands of the assessee.

But so far as decision by a civil court in relation to determination of proprietary rights and the like are concerned, it will decide the matter on the basis of the evidence before it uninfluenced by a decision, if any, rendered in taxation matters [see, *Bhikoba Shankar Dhumal v Mohan Lal Punchand Tathed*, AIR 1982 SC 865].”.

Page 193: section 4:

On the point of “*Substantive law and procedural law—what they are?*”, reference may also be made to *Banwarilal Chowkhani v CWT* [(1983) 142 ITR 264 (Gauh)]; *Guda Vijayalakshmi v Guda Ramachandra Sekhara Sastry* [AIR 1981 SC 1143]; *CWT v Kasturbhai Mayabhai* [(1987) 164 ITR 107 (Guj)].

Page 193: section 4:

Lines 14-15 from top: The decision in *Pari Mangaldas Girdhardas v CIT*, (1978) Tax LR (NOC) 91 (Guj) has been fully reported at (1977) CTR (Guj) 647.

Pages 193-4: section 4:

On the point of “*Law applicable to income-tax assessments—substantive law*”, reference may also be made to *Chunilal Mulji Motani v CIT* [(1983) 139 ITR 166 (Cal)]; *CWT v S.A.P. Annamalai* [(1983) 141 ITR 578 (Mad)]; *Addl. CIT v Delhi Cloth & General Mills Co. Ltd* [(1983) 144 ITR 275 (Del)]; *K. Krishnaveni v AAC* [(1985) 151 ITR 83 (Mad)]; *L. Rajeshwar Pershad v CIT* [(1986) 159 ITR 920 (Punj)].

Page 194: section 4:

In line 5 from the bottom, after “20 ITR 33 (Cal)”, add,—“; *Veerbhandas Purswani v CWT*, (1985) 154 ITR 128 (MP); *CWT v Maharaja Shri Devi Singhji of Jodhpur*, (1985) 155 ITR 333 (Raj); *CIT v Ganga Dayal Sarju Prasad*, (1985) 155 ITR 618 (Pat); *CST v Saluja & Co.*, (1981) 48 STC 526 (MP); *CIT v Pratap Singh*, (1982) 138 ITR 27, 36 (Del)”.

¶

Page 195: section 4:

Before the paragraph titled “*Retrospective operation*”, add,—

“*When a statute is retrospective?*—A statute is retrospective when it takes away or impairs any vested right acquired under the existing laws, or creates a new obligation, or imposes a new duty, or attaches a new

disability in respect of transactions or considerations already past. But a statute is not retrospective because a part of the requisites for its action is drawn from time antecedent to its passing [*Ashutosh Banik v CIT*, (1981) 132 ITR 544, 549 (Gauh). Also see, *CIT v Mrs. Ayodhyakumari*, (1985) 154 ITR 604 (Raj); *Bejgam Veeranna v State of AP*, AIR 1981 AP 350, 361].”

Page 195: section 4:

In line 13 from bottom, after “44 ITR 809, 815 (SC)”, add,—“; *Mahadeo v State of MP*, AIR 1981 MP 231, 235”.

Page 196: section 4:

In line 11 from top, after “34 STC 266, 276 (Mad)”, add,—“; *CED v Smt. Ila Das*, (1981) 132 ITR 720 (Cal); *CIT v Mela Ram Jagdish Raj & Co.*, (1981) 132 ITR 897 (Punj); *Associated Industries v ITO*, (1982) 134 ITR 565 (Mad); *Gurusiddappa Nurandappa Uppin v State of Karnataka*, AIR 1981 Karn. 216; *Kailash Chand Gupta v Financial Commissioner*, AIR 1981 Punj. 374].

Page 196: section 4:

On the subject “*Law of limitation has retrospective effect*”, reference may also be made to *CIT v Jankidas Mohan Lal*, (1987) 163 ITR 756 (Pat); *Haryana Iron & Steel Rolling Mills v CIT*, (1987) 164 ITR 779 (Punj); *CIT v Fair Weather Transport Corporation*, (1987) 165 ITR 48 (Pat);

Pages 196-97: section 4:

At the end of paragraph titled “*Retrospective amendments have to be given effect to*”, add,—“Also see, *Amar Dye Chem Ltd. v State of Maharashtra*, (1983) 53 STC 14 (Bom).”.

Page 198: section 4:

In line 9 from top, after “AIR 1962 SC 1006”, add,—“; *Shiv Dutt Rai Fateh Chand v Union of India*, (1984) 148 ITR 664, 694 (SC); *Empire Industries Ltd. v Union of India*, (1986) 162 ITR 846, 872-73 (SC)”.

Page 198: section 4:

In lines 27-28 from top, after “38 STC 163 (Cal—FB)”, add,—“; *CCT v Kesoram Industries & Cotton Mills Ltd.*, (1979) 44 STC 197 (Cal)”.

In the facts of *Jog Dhian Vinod Kumar v State of Haryana* [(1983) 52 STC 66 (Punj—FB)]; the retrospectivity given to the definition of “dealer” in the Haryana General Sales Tax Act, 1973, was upheld, approving the view taken in *Birla Cotton Spng. & Wvg. Mills Ltd. v State of Haryana* [(1979) 43 STC 158 (Punj)].

In the facts of *Lohia Machines Ltd. v Union of India* [(1985) 152 ITR 308, 358 (SC)], the provisions of section 80J(1A), which was given retro-

spective effect, were held merely clarificatory in nature and were accordingly held to be valid.

In the facts of *Ambal Picture Palace v Entertainment Tax Officer: Kamal Talkies v State of Andhra Pradesh* [(1986) 162 ITR 772 (AP)], retroactivity given by section 1 of the Andhra Pradesh Entertainment Act, 1985, was held to be arbitrary, unreasonable and *ultra vires* the Constitution.

Validating Act—retrospective operation.—A Validating Act seeks to validate the earlier Acts declared illegal and unconstitutional by courts by removing the defect or lacuna which led to the invalidation of the law. With the removal of the defect or lacuna resulting in the validation of any Act held invalid by a competent court, the Act may become valid, if the Validating Act is lawfully enacted. But the question may still arise as to what will be the fate of acts done before the Validating Act curing the defect has been passed. To meet such a situation and to provide that no liability may be imposed on the State in respect of such acts done before the passing of the Validating Act making such Act valid, a Validating Act is usually passed with retrospective effect. The retrospective operation relieves the State of the consequences of acts done prior to the passing of the Validating Act. The retrospective operation of a Validating Act properly passed curing the defects and lacuna which might have led to the invalidity of any act done may be upheld, if considered reasonable and legitimate [*D. Cawasji & Co. v State of Mysore*, (1984) 150 ITR 648, 660-1 (SC)].

Declaratory and remedial Acts—retrospective operation.—For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word ‘declared’ as well as the word ‘enacted’. A remedial Act, on the contrary, is not necessarily retrospective; it may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective effect by express terms or necessary intendment [*Central Bank of India v Their Workmen*, AIR 1960 SC 12, 27. Also see, *CIT v Sriram Agrawal*, (1986) 161 ITR 302 (Pat); *Madras Marine & Co. v State of Madras*, (1986) Tax LR 2403, 2411 (SC); *Keshavlal Jethalal Shah v Mohanlal Bhagwandas*, AIR 1968 SC 1336; *Channan Singh v Smt. Jai Kaur*, AIR 1970 SC 349].

Pages 199-200: section 4:

On the point of “No double taxation possible”, reference may also be made to *CIT v R. Dalmia* [(1982) 135 ITR 346 (Del)]; *Ganpatrai Sagarmal v CIT* [(1982) 138 ITR 294 (Cal)]; *CIT v Mrs. Banno E. Cowasji* [(1984) 147 ITR 744 (MP)]; *CIT v V. H. Sheth* [(1984) 148 ITR 169 (Bom)]; *Mukand Lal Malik v Union of India* [(1984) 148 ITR 461 (All)]; *S. Radhakrishnan v ITO* [(1985) 156 ITR 538 (Mad)]; *CIT v Rajinder Kumar*

Rajgarhia [(1985) 156 ITR 556 (Del); *I. P. Munavalli & Sons v CIT* [(1987) 163 ITR 744 (Karn)]; *CIT v Alisher Contractors* [(1986) 159 ITR 534 (Raj)]; *Gurusiddappa Nurandappa Uppin v State of Karnataka* [(1982) 49 STC 192 (Karn)]; *State of Orissa v Titaghur Paper Mills Co. Ltd.* [(1985) 60 STC 213, 245 (SC)]; *Premier Tyres Ltd. v Collector of Central Excise* [(1987) 12 ECC 327, 330 (SC)=AIR 1987 SC 729].

The decision in *Bhim Sen Khosla v CIT* [(1980) 18 CTR (Del) 303] has also been reported at (1982) 133 ITR 667 (Del).

In line 25 at page 200 from top, for the word "these", read "there".

Page 201: section 4:

At the end of paragraph titled "*Concept of income*", add,—

"According to Bombay High Court, for constituting 'income' the receipt must necessarily be in the nature of a 'return' for the labour, and/or skill bestowed and/or capital invested by the assessee [*Mehboob Productions Pr. Ltd. v CIT*, (1977) 106 ITR 758 (Bom)]. The above view has been dissented from by the Andhra Pradesh High Court in *CIT v Sahney Steel and Press Works Ltd.* [(1985) 152 ITR 39, 57 (AP)] where it has been held that the element of return is not an essential ingredient of income."

Page 204: section 4:

At the end of paragraph titled "*All receipts are not assessable to tax*", add,—"*Also see, Addl. CIT v Netar Krishana Sahgals Pr. Ltd.*, (1983) 141 ITR 681 (Del)" [holding that all receipts do not constitute "income"].

Page 204: section 4:

On the subject "*ITO alone empowered to determine character of a particular receipt*", reference may also be made to *ITO v K. Jayaraman*, (1987) 60 CTR (Mad) 107.

Page 204: section 4:

At the end, add,—

"**Income, to whom belongs?**—(1) R Co. agreed to purchase a piece of land from N. Actual sale in respect of such land was made in the name of R Co. and three other persons who were nominees of R Co., each purchasing a one-fourth share. The said three persons paid a sum of Rs. 2,10,000 to R Co. in addition to the proportionate consideration paid to N. Subsequently, the three-fourths share was taken by the assessee company by giving certain consideration. The question arose whether the sum of Rs. 2,10,000 so received by R Co. could be treated as the income of the assessee-company, which was a major shareholder in R Co. It was held that the sum of Rs. 2,10,000 earned by R Co. was not the income of the assessee-company [*DLF United Ltd. v CIT*, (1986) 159 ITR 339 (Del)].

(2) VA, one of the partners of the assessee-firm, conducted business at R in the name of the assessee-firm. Investments in business at R came from the capital account of VA in the assessee-firm. Profit of business at R

was not shared by any other partner of the firm but went to VA. It was held that the income from business at R was not the income of the assessee-firm [*CIT v Standard Mercantile Co.*, (1985) 153 ITR 105 (Pat); *CIT v Standard Mercantile Co.*, (1987) 61 CTR (Pat) 60] but was the income of VA [*CIT v Vasudeo Agarwal*, (1986) 160 ITR 906 (Pat)].

(3) Income from a gifted property accruing after the date of the gift does not any more belong to the donor [*CIT v Begum Noor Banu Alladin*, (1987) 163 ITR 389 (AP)].

(4) In an earlier year, the assessee received excess amount of local fund cess. Such excess amount had to be refunded under a court's decree in a subsequent year. It was held that the excess was not the income of the assessee even in the year of receipt [*CIT v C. K. Thakore*, (1982) 136 ITR 464 (Bom), special leave petition dismissed by the Supreme Court: (1983) 143 ITR (St.) 68].

(5) The assessee-company declared dividend and after such declaration the undertaking of the company was taken over by the Government. The Government disputed its liability to pay compensation in respect of such declared dividend to the company. While the dispute was pending in an appeal before the High Court, the Government, in obedience of an *interim* order, paid equivalent amount in a bank. Ultimately, the dispute was decided in favour of the company. The amount so deposited along with interest thereon was received by the company. The question was whether such amount of interest was assessable to tax in the hands of the assessee-company. It was held that the interest did belong to the company and was includible in the assessable income of the company [*CIT v South Arcot Electricity Distribution Co. Ltd.*, (1983) 140 ITR 997 (Mad)].

(6) Income of house property and interest income in the name of wife of the assessee were, on facts, held assessable as the income of the assessee-husband [*Shri Harikisan Gondi v CIT*, (1987) Taxation 85(3)-210 (MP)].

(7) Coparceners of the assessee-HUF were partners of two firms. There was neither evidence to show that the funds invested in these firms came from the HUF funds nor that the business of these firms belonged to the HUF. It was held that the income of these firms was not assessable in the hands of the assessee-HUF [*Prahlad Maliram v CIT*, (1987) 166 ITR 149 (Raj)].

Also see, *Addl. CIT v Birdichand Pannalal*, (1987) 163 ITR 576 ((Raj)); *CIT v Birdi Chand*, (1987) 163 ITR 578 (Raj); *I. P. Munavalli & Sons v CIT*, (1987) 163 ITR 744 (Karn).".

Page 205: section 4:

After line 25 from top, *add*,—

"In *CIT v S. P. Jain* [(1987) 167 ITR 161 (SC)], it has been held that the amendment effected by the 1955-substituted provisions of section 2(6C) of the 1922 Act was not of clarificatory nature and the same was held not operative for the assessment year 1954-55."

Page 207: section 4:

At the end of line 8 from the bottom, after “(Bom)”, *add*,—“; *Dhirajlal Haridas v CIT*, (1982) 138 ITR 570 (Bom); *CIT v M. R. Ruia*, (1987) Taxation 85(3)-305 (Bom)” [holding that the value of the benefit or perquisite received by the relative of the assessee director could not be taxed in his hands under section 2(24)(iv)].

Page 208: section 4:

In line 11 from top, after “held not to be a benefit, etc.].”, *add*,—“Also see, *CIT v Jawaharlal Nagpal* [(1987) 34 Taxman 333 (MP)], holding that the unauthorised user of car of the company by the assessee, managing director, could not constitute a ‘perquisite’.”.

Page 208: section 4:

Before the paragraph titled “*Extent of the inclusion u/s. 2(24)(iv)*”, *add*,—

“Bonus or right shares received by a director in respect of shares held by him cannot be treated as a perquisite within the meaning of section 2(24)(iv) [*CIT v Prem Narain Aggarwal*, (1982) 136 ITR 407 (Del)].

In *CIT v Master Gaurav Dalmia* [(1987) 34 Taxman 214 (Del)], the assessee purchased certain shares in a company D from two other companies wherein relative of the assessee was a director. The Income-tax Officer assessed the difference between the break-up value of these shares and the purchase value thereof as and by way of benefit under section 2(24)(iv). It was held, on facts, that the assessee derived no benefit within the meaning of that section 2(24)(iv).”.

Page 208: section 4:

At the end of paragraph titled “*Extent of inclusion u/s. 2(24)(iv)*”, *add*,—

“When a director, etc., is paid in cash, then the quantum of the cash paid determines the value of the perquisite or benefit. If he is paid in kind by giving him some facilities like rent-free accommodation, or free servant or a car at the company’s expense, and so on, then the amount actually expended by the company determines the value of the perquisite or benefit for the purposes of taxation under section 2(24)(iv) [*J. Dalmia v CIT*, (1982) 138 ITR 653, 657 (Del)].”.

Pages 208-09: section 4:

The case-law relating to section 2(24)(viii) has been discussed at pages 5125-26 of Vol. 6 under paragraph titled “*Receipts of annuities are ‘income’*”. Also see, *Jayakumari & Dilharkumari v CIT*, (1987) 165 ITR 791 (Karn); *Jayakumari & Dilharkumari v CIT*, (1987) 165 ITR 792 (Karn).

Page 209: section 4:

Lines 25-26 from top: In *CIT v G. R. Karthikeyan* [SLP (Civil) No. 8471

of 1980: (1983) 142 ITR (St.) 1] the Supreme Court has granted a special leave petition against the decision in *CIT v G. R. Karthikeyan* [(1980) 124 ITR 85 (Mad)].

Page 209: section 4/2(24)(x):

Before the paragraphs titled "*Income, when falls into the tax net*", add,—

"*Definition of 'income' widened.*—By inserting a new sub-clause (x) in section 2(24) with effect from 1st April, 1988, whereunder any sum received by the assessee from his employees as his contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees has been included within the definition of 'income', the Finance Act, 1987, has widened the definition of 'income'.

The insertion, by the Finance Act, 1987, of section 36(1)(va) and of section 57(ia) may also have relevancy in the context of section 2(24)(x)."

Page 210: section 4:

Lines 22-23 from top: In *CIT v Ferozepur Finance Pr. Ltd* [SLP (Civil) No. 8158 of 1981: (1983) 144 ITR (St.) 50], the Supreme Court has dismissed special leave petition against the decision in *CIT v Ferozepur Finance Pr. Ltd* [(1980) 124 ITR 619 (Punj)]. The above Punjab decision has been followed in *CIT v N. D. Radha Kishan & Co* [(1983) 140 ITR 860 (Punj)], holding that a notional receipt is not liable to be taxed.

In *C. P. Kushalappa & Sons v CIT* [(1987) 163 ITR 739 (Karn)], the Income-tax Officer made addition on the basis that the assessee had recovered interest on the advances given to the growers although there was no acceptable evidence before him in regard to such recovery. Further, the Income-tax Officer made the interest paid by the assessee to his sundry creditors as a yardstick for measuring the interest alleged to have been recovered from the growers. It was held that the Income-tax Officer had proceeded arbitrarily and there was no justification for the addition.

Page 210: section 4:

At the end of paragraph titled "*Income in foreign currency—conversion into Indian currency*", add,—

"In *D. A. Graham & N. G. F. Graham v CIT* [(1985) 154 ITR 879 (Karn)], rule 115(b), which prescribed rate of exchange for conversion into rupees of income expressed in foreign currency, had been held to be for the purposes of the Act and not beyond the rule-making power of the Board."

Page 214: section 4:

Lines 10 and 11 from top: In *CIT v Bankipur Club Ltd.* [SLP (Civil) No. 11406-11410 of 1981: (1984) 146 ITR (St.) 184], the Supreme Court has granted special leave petition against the decision in *CIT v Bankipur Club Ltd* [(1981) 129 ITR 787 (Pat)]. The decision in *Truck Operators'*

Union v CIT [(1981) Tax LR 724 (Del)] has also been reported at (1981) 132 ITR 62 (Del).

On the point of mutuality, reference may also be made to *CIT v Cawnpore Club Ltd* [(1984) 146 ITR 181 (All)]; *CIT v West Godavari District Rice Millers Association* [(1984) 150 ITR 394 (AP)]; *Addl. CIT v Secunderabad Club* [(1984) 150 ITR 401 (AP)]; *CIT v Darjeeling Club Ltd* [(1985) 153 ITR 676 (Cal)]; *CIT v Delhi Gymkhana Club Ltd* [(1985) 155 ITR 373 (Del)]; *Jamshedpur Co-operative Stores Ltd. v CIT* [(1986) 157 ITR 127 (Pat), special leave petition was granted by the Supreme Court: (1986) 161 ITR (St.) 132]; *CIT v United Club* [(1986) 161 ITR 853 (Pat)]; *CIT v Beldih Club* [(1986) 161 ITR 861 (Pat)]; *Bihar Rajya Sikshak Sahyog Sangh Ltd. v CIT* [(1987) 165 ITR 681 (Pat)]; *CIT v Ranchi Club Ltd.* [(1987) 168 ITR 120 (Pat)]; *Jamshedpur Co-operative Stores Ltd. v CIT* [(1987) 61 CTR (Pat) 336].

Page 215: section 4:

Lines 2 and 3 from top: The decision in *Bombay Burmah Trading Corporation Ltd. v CIT* [(1971) 81 ITR 777 (Bom)], has been affirmed by the Supreme Court in *CIT v Bombay Burmah Trading Corporation* [(1986) 161 ITR 386 (SC)].

Pages 215-16: section 4:

In the last line of the paragraph titled "*Determination of the nature of receipt at the initial stage*", after "94 ITR 582, 589 (Delhi)", *add*,—"": *CIT v A. V. M. Ltd.*, (1984) 146 ITR 355 (Mad)".

Page 216: section 4:

After line 7 from top, *add*,—

"Subsequent events, whether affect the initial nature of receipt.—According to Bombay High Court in *CIT v C. K. Thakore* [(1982) 136 ITR 464 (Bom)], the subsequent determination of the nature of a particular receipt relates back to the time of the receipt.

However, the Karnataka High Court is of the view that the later event cannot affect the earlier nature of the receipt as also the quantum of that receipt [*CIT v Syndicate Bank*, (1986) 159 ITR 464 (Karn)].".

Page 216: section 4:

Before the paragraph titled "*Nomenclature is not decisive*", *add*,—

"Profit in a composite transaction—apportionment of.—Though profit in a composite transaction can be apportioned as between manufacture and sale in the same accounting year, such an apportionment is not permissible when one part of the transaction, viz., manufacture, falls in one accounting year and another part of the transaction, viz., the trading operations, falls in another accounting year [Cf. *CEPT v Kalyan Mal Phool Chand*, (1987) 166 ITR 180, 189-190 (SC)].".

Page 216: section 4:

On the point "*Nomenclature is not decisive*", reference may also be made to *CIT v J. B. Italia*, (1983) 141 ITR 948 (AP); *CIT v Stanton & Stavelly (Overseas) Ltd.*, (1984) 146 ITR 405 (Cal); *CIT v C. K. Thakore*, (1982) 136 ITR 464 (Bom); *State of Orissa v Titaghur Paper Mills Co. Ltd.*, AIR 1985 SC 1293, 1347; *Eklingji Trust v CIT*, (1986) 158 ITR 810 (Raj); *Rajabali Nazarali & Sons v CIT*, (1987) 163 ITR 7, 16 (Guj); *Neroth Oil Mills Co. Ltd. v CIT*, (1987) 166 ITR 518, 523 (Ker).

Page 216: section 4:

Before the paragraph titled "*In the hands of the receiver*", add,—

"Treatment as income by the assessee is not conclusive.—A receipt which in law cannot be regarded as income cannot become so merely because the assessee has erroneously credited it to the profit and loss account [*CIT v Stewarts & Lloyds of India Ltd.*, (1987) 165 ITR 416, 436 (Cal), relying on *CIT v India Discount Co. Ltd.*, (1970) 75 ITR 191 (SC)]."

Page 220: section 4:

After line 15 from top, add,—

"In *CIT v K. D. Ramachandraraj Urs* [S.L.P. (Civil) No. 8736 of 1981: (1984) 146 ITR (St.) 2], their Lordships of the Supreme Court have, by an order dated 2-1-1984, granted special leave to the Department to appeal against the order dated 26-6-1981 of the Karnataka High Court in C. P. No. 10 of 1981, whereby the High Court declined to call for a statement of case on the question whether, where an annuity policy was taken out by the father of the assessee to provide a monthly income for the assessee, the amount was not a return of capital but was taxable as revenue receipt in the assessee's hands, because the purchaser of the policy and the receiver of the amounts were different persons."

Page 220: section 4:

At the end of paragraph titled "*Perpetual or life annuity in exchange of a capital asset*", add,—"*The decision in Sayed Sadat's case [(1979) 118 ITR 939 (Pat)] has been distinguished, on facts, in Eklingji Trust v CIT [(1986) 158 ITR 810 (Raj)] where the Rajasthan High Court held that the compensation that was paid to the assessee by way of annuity in perpetuity after the resumption of the jagir lands was a capital receipt.*

In the facts of *CIT v Mrs. D. C. Davis* [(1986) 161 ITR 518 (Karn)], the annuity received by the beneficiary under the terms of a will has been held to be her income."

Page 221: section 4:

Lines 10 and 11 from top: The decision in *CIT v Maharaja Chintamani Saran Nath Sahdeo* [(1980) 15 CTR (Pat) 300] has also been reported at (1982) 133 ITR 658 (Pat). This Patna decision has been followed in *CIT v Chintamani Saran Nath Sahdeo* [(1986) 162 ITR 255 (Pat)] and in *CIT v A.K. Mandal* [(1986) Taxation 81(3)-263 (Pat)].

Page 221: section 4:

At the end of paragraph titled "*Interest—nature of*", add,— "The decision in *CIT v Express Newspapers Ltd.* [(1980) 124 ITR 117 (Mad)] has been followed in *Express Newspapers Ltd. v CIT* [(1984) 148 ITR 484 (Mad)]. In the facts of *CIT v J. D. Italia* [(1983) 141 ITR 948 (AP)], a sum, which was styled as interest, was held to be not in the nature of interest and the same was held to be a capital receipt."

Page 221: section 4:

In line 13 from bottom, after "66 ITR 465 (SC)", add,— " ; *CIT v Syed Khadrudin Ali Khan*, (1983) 144 ITR 266 (AP)".

Page 222: section 4:

Lines 18-19 from top: The decision in *Bombay Burmah Trading Corporation Ltd. v CIT* [(1971) 81 ITR 777 (Bom)] has been affirmed in *CIT v Bombay Burmah Trading Corporation* [(1986) 161 ITR 386 (SC)].

Page 224: section 4:

The decision in *CIT v Saraswathi Publicities* referred to in serial No. 28 has also been reported at (1981) 132 ITR 207 (Mad). The special leave petition against this decision has been dismissed by the Supreme Court [(1983) 142 ITR (St.) 6]. Also see, *CIT v G. D. Naidu*, (1987) 165 ITR 63 (Mad).

After serial No. 28, add,—

"29. *CIT v M. B. Tyres*, (1982) 137 ITR 295 (MP) [compensation for acquisition of business premises resulting in closure of business; held capital receipt. Also see, *CIT v Indo Tyre House*, (1983) 142 ITR 530 (MP)].

30. *Nawn Estates Pr. Ltd. v CIT*, (1982) 137 ITR 557 (Cal) [compensation for requisition of a trading asset; held revenue receipt].

31. *CIT v Automobile Product of India Ltd.*, (1983) 140 ITR 159 (Bom) [compensation received for the extinction and surrender of the industrial licence and the collaboration agreement; held capital receipt].

32. *D.L.F. Housing & Construction Pr. Ltd. v CIT*, (1983) 141 ITR 806 (Del) [compensation for compulsory acquisition of land purchased in the course of business; held capital receipt. Also see, *D.L.F. United Ltd. v CIT*, (1986) 161 ITR 714 (Del)].

33. *CIT v Popular Metal Works & Rolling Mills*, (1983) 142 ITR 361 (Bom) [compensation received from insurance company for loss of stock-in-trade in transit; held revenue receipt].

34. *CIT v Smt. Asrafi Devi Rajgharia*, (1983) 142 ITR 380 (Cal) [compensation payable under section 48A of the Land Acquisition Act, 1894, for the damage suffered by the owner in consequence of the delay in making the award under section 11 of that Act; held capital receipt].

35. *CIT v Syndicate Bank*, (1986) 159 ITR 474 (Karn) [annual payments received by the assessee represented partly compensation and partly interest thereon; the former held to be of capital and the latter to be of revenue character]. Also see, *CIT v Syndicate Bank*, (1986) 159 ITR 464 (Karn).

36. *B. G. Shah v CIT*, (1986) 162 ITR 23 (Bom) [compensation received by the assessee from the other party for non-performance of agreement for obtaining monthly tenancy of a premises from the other party; held capital receipt].

37. *CIT v Vardhini & Co.*, (1987) 165 ITR 342 (Karn) [compensation received for surrendering leasehold right; held capital receipt].

38. *K. Eapen Jacob v CIT*, (1987) 166 ITR 199 (Mad) [compensation received in lieu of abandonment of his contractual right under a partnership deed and for loss of office and goodwill in terms of a compromise decree in a civil court].”.

Page 227: section 4:

After serial No. 8, add,—

“In *Rajabali Vazirali & Sons v CIT* [(1987) 163 ITR 7 (Guj)], the assessee transferred his leasehold rights in a business premises to a third person for a consideration with the consent of the landlord. It was held that the receipt was nothing but premium or *pagri* for transferring the leasehold right and was a capital receipt.

In *CIT v Maryam Mirza* [(1987) 165 ITR 339 (Karn)], the assessee received a certain sum as premium for granting lease for a period of 50 years. It was, on facts, held that the sum so received was of a capital nature and not of a revenue nature.”.

Pages 227-228: section 4:

On the subject of nature of receipt in case of sale proceeds of trees, reference may also be made to *Addl. CIT v Pandian Plantations*, (1984) 148 ITR 86 (Mad); *C. G. Thimmaiah v CIT*, (1984) 148 ITR 741 (Karn); *Maharaja Dharmendra Pratap Narain Singh v State of U.P.*, (1985) 153 ITR 389 (All); *Addl. CIT v Indian Drugs & Pharmaceuticals Ltd.*, (1983) 141 ITR 134 (Del) [holding the receipt to be of capital nature].

On the other hand, in *Baltimore Estate Pr. Ltd. v State of Tamil Nadu*, (1987) 163 ITR 195 (Mad), it has been held that the sale proceeds of *albezia* trees were revenue receipts. Also see, *CIT v Balmore Estates Pr. Ltd.*, (1987) 164 ITR 687 (Mad).

Page 236: section 4:

After line 13 from top, add,—

“In *Bombay Burmah Trading Corporation Ltd. v CIT* [(1987) Taxation 85(3)-262 (Bom)], it has been held that compensation received by the assessee in respect of mills and machinery stores, sawn timber and logs was not of revenue nature.”.

Page 238: section 4:

Line 23 from top: The decision in *Bank of Cochin Ltd. v CIT* [(1974) 94 ITR 93 (Ker)] has been affirmed by the Supreme Court in *State Bank of India v CIT* [(1986) 157 ITR 67 (SC)].

Page 239: section 4:

Line 9 from top: In *Universal Radiators v CIT* [SLP (Civil) No. 1027 of 1981: (1983) 143 ITR (St.) 61], the Supreme Court has granted special leave to appeal against the decision in *CIT v Universal Radiators*, (1979) 120 ITR 906 (Mad).

After serial No. 17 (giving illustrations about nature of devaluation gains), *add*,—

- “18. *Indo-Burma Petroleum Co. Ltd. v CIT*, (1982) 136 ITR 251 (Cal).

[Increase due to devaluation in the value of the amount which was not circulating capital of the assessee—held, not of revenue nature. But accretion in the value of the amount retained in U.K. for business purposes, held of revenue nature]. Also see, *Indian Leaf Tobacco Development Co. Ltd. v CIT*, (1982) 137 ITR 827 (Cal).

19. *Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal).
[Surplus resulting due to devaluation in regard to insurance amount received on loss of cargo—held, of revenue nature.] Also see, *CIT v Popular Metal Works & Rolling Mills*, (1983) 142 ITR 361 (Bom).

20. *V. D. Swami & Co. Pr. Ltd. v CIT*, (1984) 146 ITR 425 (Mad).
[Excess amount obtained, due to devaluation, in respect of the price received on export of goods abroad—held, of revenue nature.]

21. *CIT v National Palayacot Co.*, (1984) 147 ITR 714 (Mad).
[Profit due to devaluation in respect of price of exported goods remitted to India by a foreign branch—held, revenue in nature.]

22. *CIT v Martin & Harris Pr. Ltd.*, (1985) 154 ITR 460 (Cal).
[Reduction, due to devaluation, in liability of the assessee under the outstanding bills of the foreign suppliers—held, of revenue nature.]

23. *Ganesh Flour Mills Co. Ltd. v CIT*, (1985) 156 ITR 179 (Del).
[Additional amount received due to devaluation in respect of price of goods exported—held, of revenue nature.]

24. *Triveni Engineering Works Ltd. v CIT*, (1985) 156 ITR 202 (Del).

[Profit on devaluation of £-sterling on loan in foreign currency convertible into equity capital—held, of capital nature.]

25. *State Bank of Travancore v CIT*, (1986) 158 ITR 102 (SC).
[Surplus resulting from devaluation in respect of cash balances

held by the assessee in foreign currency with its foreign constituents—held, of revenue nature.]

26. *Hindustan Trading Corporation v CIT*, (1986) 160 ITR 15 (Guj).

[Excess amount received, due to devaluation, in respect of price of goods exported—held, of revenue nature.]

27. *Chandmul Rajgarhia v CIT*, (1987) 164 ITR 486, 500-501 (Pat).

[Amount received, due to devaluation, from foreign parties to whom goods were exported—held, of revenue nature.]”.

Pages 239-40: section 4:

At the end of paragraph titled “*Assets received on partition of a HUF are primarily of capital nature in the hands of members*”, add,—

“In *Ramjibhai Dahyabhai v CIT* [(1986) 158 ITR 540 (Guj)], lands allotted to a member of an AOP on its dissolution was held to be capital and not stock-in-trade of the member concerned.”.

Page 240: section 4:

At the end of sub-paragraph titled “*Illustrations*” under paragraph titled “*Sale of know-how*”, add,—

“In the facts of *CIT v Dunlop Rubber Co. Ltd.* [(1983) 142 ITR 493 (Cal)], the amount received by the assessee, a non-resident company, from its Indian subsidiary was held merely to be re-imbursement of expenditure incurred by the assessee in connection with the research work and not amounting to royalty assessable as income.

In *CIT v Ralliwolf Ltd.* [(1983) 143 ITR 720 (Bom)], the assessee, a non-resident company, provided drawings, etc., and technical information in exchange of fully paid up equity shares. It was held that the value of the shares was of a capital nature as it was in consideration for imparting know-how in association with the sale of capital assets.”.

Page 245: section 4:

After serial No. (20), giving illustrations of capital receipts, add,—

“(21) Amount received by the assessee from its holding-company in order to meet the losses incurred by the assessee [*Addl. CIT v Handicrafts & Handloom Export Corporation*, (1982) 133 ITR 590 (Del); *Handicrafts & Handloom Export Corporation of India v CIT*, (1983) 140 ITR 532 (Del)].

(22) Two other companies amalgamated with the assessee-company—allotment of shares to shareholders of amalgamating companies for lesser value than the value of the assets taken over—surplus held not to be on revenue account [*CIT v Bharat Development P. Ltd.* (1982) 135 ITR 456 (Del)].

(23) Bonus shares received by a shareholder [*CIT v Prem Narain Aggarwal*, (1982) 136 ITR 407 (Del)].

(24) Refundable cash deposit collected from the consignees and kept in deposit in a joint trust account of the ship-owner and the agents of the insurance company—held to be in the nature of security deposit and not of income nature [*CIT v Surendra Overseas Ltd.*, (1982) 136 ITR 553 (Cal)].

(25) Receipts in the hands of the assessee, whose factory was being set up, from sale of tender forms and supply of water and electricity to contractors engaged in construction [*Addl. CIT v Indian Drugs and Pharmaceuticals Ltd.*, (1983) 141 ITR 134 (Del)].

(26) Agent selling at a price higher than that fixed by the principal—as the principal issued debit notes against the agent in respect of such realisation, the agent-assessee accepts liability—held, the amount of debit notes is not the income of the assessee [*Addl. CIT v Netar Krishana Sahgals Pr. Ltd.*, (1983) 141 ITR 681 (Del)].

(27) Excess amount collected by the assessee, an insurance agent, from the policy-holders—excess not refunded to policy-holders but credited to his own profit and loss account—as the excess amounts belonged to the policy-holders, the subsequent writing off, etc., did not change the nature of the receipt in the hands of the agent and was not agent's income [*Bengal & Assam Investors Ltd. v CIT*, (1983) 142 ITR 156 (Cal). Also see, *CIT v Gillanders Arbuthnot & Co. Ltd.*, (1983) 142 ITR 598 (Cal); *CIT v Andhra General Finance Corporation*, (1985) 156 ITR 386 (AP)].

(28) Assessee took on hire certain buses and sublet the same to other persons—lump-sum payment made by the assessee was treated to be of capital nature—held, on facts, the lump-sum payments received by the assessee from sub-lessees were also to be treated on capital account [*CIT v Salkia Transport Associates*, (1983) 143 ITR 39 (Cal)].

(29) The difference between the book-value of the trading assets taken and the price paid therefor in the shape of shares could be regarded only as share premium and not as revenue profits [*CIT v Krishnaram Baldeo Bank Pr. Ltd.*, (1983) 144 ITR 600 (MP), special leave petition dismissed by the Supreme Court: (1983) 141 ITR (St.) 49; *Addl. CIT v Krishnaram Baldeo Bank Pr. Ltd.*, (1983) 144 ITR 608 (MP)].

(30) While lump-sum alimony to wife granted under a decree is a capital receipt, monthly alimony received by the wife is her income [*Princess Maheshwari Devi of Pratapgarh v CIT*, (1984) 147 ITR 258 (Bom)].

(31) The assessee-company allotted its unissued shares at a premium and the allottees were given office accommodation in the building owned by the assessee—share premium held to be capital receipt [*Addl. CIT v Om Oils & Oilseeds Exchange Ltd.*, (1985) 152 ITR 552 (Del)].

(32) Amount received by a retiring partner—the portion referable to the assignment of his right in the assets of the firm has been held to be capital, and the portion referable to his working in the firm has been held to be of revenue nature [*N. M. Mody v CIT*, (1986) 162 ITR 420 (Bom)]. Also

see, *Addl. CIT v Brahm Swaroop & Bros.*, (1987) 163 ITR 321 (Raj); *CIT v G. D. Naidu*, (1987) 165 ITR 63 (Mad); *CIT v M. Uttam Reddy*, (1984) 148 ITR 580 (Mad); *K. Eapen Jacob v CIT*, (1987) 166 ITR 199 (Mad).

Similarly, the amount received by a retiring partner on account of estimated profits on the assessee's share in stock-in-hand and the stock to be procured on the basis of quota rights and import entitlements is his income from business [*Sukhbir Parshad v CIT*, (1983) 144 ITR 437 (Punj)].

(33) Damages received from the other party for non-performance of the non-business agreement—held, capital receipt [*CIT v Ashoka Marketing Ltd.*, (1987) 164 ITR 664 (Cal)].

(34) Amount kept in a suspense account pending decision of the court [*CIT v Nizam Sugar Factory*: S.L.P. (Civil) No. 8499 of 1980: (1984) 145 ITR (St.) 5].

(35) Damages received from the supplier of plant and machinery which was found to be defective, not giving the guaranteed quantity and quality of production—held of capital nature [*CIT v Barium Chemicals*, (1987) 168 ITR 164 (AP)].

(36) Amount received from a firm by one of the heirs of a deceased partner for not exercising his right of introducing a partner in that firm—held, to be of capital nature [*CIT v Mrs. Jaya Bhaskaran*, (1987) 61 CTR (Pat) 214].”.

Page 248: section 4:

After line 6 from top (illustrations about revenue receipts), *add*,—

“(26) Interest on unutilised borrowings for construction of a plant—held income [*Addl. CIT v Madras Fertilisers Ltd.*, (1980) 122 ITR 139 (Mad)]. Also see, *CIT v Cap Steel Ltd.*, (1986) 162 ITR 533 (Karn).

(27) Amount of difference received on settlement of a contract for sale of shares [*CIT v Bharat Nidhi Ltd.*, (1982) 133 ITR 447 (Del), special leave petition dismissed by the Supreme Court: (1984) 146 ITR (St.) 186].

(28) Receipts on chits (or *kuries*) [*CIT v K. N. G. Bros.*, (1982) 134 ITR 323 (Ker); *M. George Bros. Chitty Fund v CIT*, (1984) 150 ITR 333 (Ker)]. Also see, *CIT v Dr. Chinna Oomen*, (1984) 150 ITR 583 (Mad).

(29) Part of the amount paid by the life-members of a club was held to be the commuted value of annual subscription and assessable as income [*CIT v W. I. A. A. Club Ltd.*, (1982) 136 ITR 569 (Bom)].

(30) Interest on securities as also income from other sources received by a company in the course of its voluntary winding up [*CIT v Liquidator of Ratlam Electric Supply & Wvg. Mills Co. Ltd.*, (1982) 138 ITR 184 (MP), special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 51].

(31) Estimated amount requisite for maintenance of the assessee, a social worker having no other source of income, and his wife, from out of subscriptions received from foreign missionaries towards carrying out social

work, was held to be assessee's income [*CIT v P. S. Chelladurai*, (1984) 145 ITR 139 (Mad)].

(32) *Meshe* profits awarded by court for wrongful possession [*CIT v P. Mariappa Gounder*, (1984) 147 ITR 676 (Mad)].

(33) Membership fees received by the assessee-association [*S. N. D. P. Yogam v CIT*, (1985) 154 ITR 624 (Ker)].

(34) Amount of the security deposit forfeited by the assessee under the terms of a lease agreement [*CIT v Balaji Chitra Mandir*, (1985) 154 ITR 777 (AP)].

(35) Consideration received for transfer of a mining lease by the assessee engaged in mining business—held, revenue receipt [*CIT v Lakshminarayana Mining Co.*, (1987) 165 ITR 326 (Karn)].

(36) Excess amount received for transferring shares with controlling interest—held, of revenue nature [*CIT v Mahadeo Ram Kumar*, (1987) 166 ITR 477 (Cal)].

(37) Amount received by the assessee under a compromise was held to be of revenue nature [*Seth Banarsi Dass Gupta v CIT: S. B. Sugar Mills Ltd. v CIT*, (1987) 166 ITR 783 (SC)].”.

Page 250: section 4:

After line 4 from top, *add*,—

“No diversion where an agent receives income on behalf of his principal.—Where an income is received by an agent, he receives it for and on behalf of his principal. There is no question of diversion by overriding title as the agent is bound to make over the income to the principal under the general law of agency [*CIT v Y. S. Desale*, (1982) 137 ITR 117 (Bom)].”.

Page 250: section 4:

At the end of paragraph titled “*Owner of house property is taxable in spite of diversion*”, *add*,— “But in the facts of *Smt. Savita Mohan Nagpal v CIT* [(1985) 154 ITR 449 (Raj)], where under an agreement the further construction was made by the son and the lease deed was executed by the father and the son as joint-lessors, it was held that the 50-per cent. of the net rental income was diverted by overriding title to the son.

In *Dr. Raja Sir M. A. Muthiah Chettiar v CIT* [(1984), 148 ITR 532 (Mad)], the assessee, owner of a house property, agreed to gift the property to a trust although no gift deed was registered. It was held that under the agreement to gift, no title to the property passed and there could be no diversion of property income.”.

Page 251: section 4:

At the end of serial No. (10), *add*,— “Also see, *CIT v Alisher Contractors*, (1986) 159 ITR 534 (Raj)”.

Page 251: section 4:

In line 2 from the bottom, after "117 ITR 516 (Pat)", add,— " , *CIT v Darbhanga Laheriasarai Electric Supply Co.*, (1985) 154 ITR 812 (Pat);".

Page 252: section 4:

On the subject of diversion by overriding title, at the end of serial No. (21), add,— "Also see, *Matubhai C. Patel v CIT*, (1982) 133 ITR 303 (Guj).".

At the end of serial No. (22), add,— "*CIT v Sardar Virendra Singh Bolia*, (1982) 135 ITR 802 (MP); *Maharaja Gajendrapal Singh of Jhabua v CIT*, (1982) 137 ITR 151 (MP).".

The decision in *CIT v Smt. Kamalabai Juthalal* [(1977) 108 ITR 755 (Bom)], discussed at serial No (25), was concerned with a period prior to the introduction of section 64(1)(vi) with effect from 1st April, 1976.

After serial No. (25), add,—

"(26) Partition of the capital of the HUF in a firm in which the *karta* was a partner representing the family—even after partition, *karta* continuing as a partner in his individual capacity—amounts allocated to other members remained invested in their respective names in the firm on condition that the *karta*-assessee would pay interest on such amounts to the other members—held, that interest so paid was diverted by overriding title [*CIT v Rupchand Prabhudas*, (1982) 134 ITR 632 (Bom)].

(27) Even after partition of the HUF, *karta* continuing a partner in the firm and receiving share income—held that the portion allottable to the divided members and payable to them was diverted by overriding title [*CIT v M. D. Kanoria*, (1982) 137 ITR 137 (Bom); *CIT v Indramohan Sharma*, (1982) 138 ITR 696 (Bom); *CIT v Indramohan Sharma*, (1982) 138 ITR 699 (Bom); *CIT v Nemkumar Porwal*, (1984) 148 ITR 30 (Bom); *CIT v Pabbati Shankaraiah*, (1984) 145 ITR 702 (AP); *Shantikumar Maganlal Jain v CIT*, (1984) 148 ITR 11 (Bom). Also see, *CIT v S. Subba Reddy*, (1986) 159 ITR 120 (AP)].

(28) Acquisition of land in respect of which agreement for sale had been entered into—seller and purchaser agreeing that the amount of compensation in excess of the agreed sale-price would belong to the purchaser—such excess was held to have been diverted by overriding title [*CIT v M.D. Manohar Rao*, (1985) 155 ITR 696 (AP)].

(29) Stipulation about trustees' remuneration in the trust deed constituted an overriding title in respect of that part of the trust income [*CIT v Trustees of H.E.H. The Nizam's Miscellaneous Trust*, (1986) 160 ITR 253 (AP)].

(30) Amount required to be transferred to the reserve fund under section 43(2) of the Madhya Pradesh Co-operative Societies Act, 1960 [*Kashkal Co-operative Marketing Society Ltd. v CIT*, (1987) 165 ITR 437 (MP)].

On the point of diversion, reference may also be made to: *CIT v Nandini-ben Narottamdas*, (1983) 140 ITR 16 (Guj); *CIT v Kanchanlal L. Tal-*

sania, (1983) 141 ITR 284 (Bom); *Jyotsnaben Narottamdas v CIT*, (1983) 142 ITR 91 (Guj); *CIT v A. Tosh & Sons Pr. Ltd.*, (1987) 166 ITR 867 (Cal).".

Page 253: section 4:

The decision of the Kerala Full Bench in *Venugopala's* case [(1968) 68 ITR 83 (Ker—FB)] in serial No. (13) has been affirmed in *V. Venugopala Varma Rajah v CAg. IT* [(1972) 84 ITR 466 (SC)].

Page 254: section 4:

At the end of serial No. (19), *add*,— "Also see, *Arvind Singh v CIT*, (1986) 160 ITR 908 (Raj); *Smt. Sushila Kumari v CIT*, (1986) 160 ITR 918 (Raj).".

Page 254: section 4:

After serial No. (21), *add*,—

(22) Pending registration, the vendor paid a portion of the rental income to the purchaser in view of the fact that the purchaser has already paid a portion of the price—held no diversion by overriding title [*CIT v Smt. Archana R. Dhanwatay*, (1982) 136 ITR 355 (Bom)].

(23) Contingency reserve created for meeting future unknown liability [*CIT v Sijua (Jharriah) Electric Supply Co. Ltd.*, (1984) 145 ITR 740 (Cal)].

(24) Amounts contributed for charitable purposes out of receipts of the assessee-club [*Madras Race Club v CIT*, (1985) 151 ITR 675 (Mad)].

(25) Amount paid by the surviving partners to the widow of the deceased partner [*K. C. Bose & Co. v CIT*, (1985) 156 ITR 701 (Cal)].

(26) A provision made in the profit and loss account of the firm for the use of one of the partners between whom and the other partners there was litigation which ultimately resulted in the exclusion of the partner from the firm [*J. H. Morgan & Sons v CIT*, (1987) 163 ITR 746 (Karn)].

Also see, *CIT v Barwari Lal Agarwala*, (1987) 167 ITR 321 (Pat); *Vazir Sultan Tobacco Co. Ltd. v CIT*, (1987) 31 Taxman 209 (AP); *CIT v State Bank of India*, (1987) 32 Taxman 619 (Bom).".

Page 254: section 4:

Line 13 from the bottom: The decision in *CIT v Smt. Lakshmi Narayanan* [(1980) 18 CTR (Mad) 30] has also been reported as *CIT v Smt. Lakshmi Narayan*, (1981) 132 ITR 355 (Mad), whereagainst a special leave petition has been granted by the Supreme Court: (1983) 143 ITR (St.) 38.

Page 255: section 4:

After line 13 from top, *add*,—

"In *State Bank of Travancore v CIT* [(1986) 158 ITR 102, 135 (SC)], it was, by majority, laid down that (1) the concept of real income would apply where there has been a surrender of income which in theory may

have accrued but in the reality of the situation, no income had resulted because the income did not really accrue; (2) where the Act applies, the concept of real income should not be so read as to defeat the provisions of the Act; and (3) the concept of real income is certainly applicable in judging whether there has been income or not but, in every case, it must be applied with care and within well-recognised limits.

In so laying down, the Supreme Court observed that the decision in *Kashiparekh's* case [(1960) 39 ITR 706 (Bom)] must be confined to its own peculiar facts. The Supreme Court has disapproved the decision in *CIT v Devi Films Pr. Ltd.* [(1983) 143 ITR 386 (Mad)].”.

At the end of page 255, *add*,—

On the subject of “*Concept of real income*”, reference may also be made to *CIT v Godhra Electricity Co. Ltd.*, (1983) 140 ITR 657 (Guj); *Beni Prasad Sidh Gopal v CIT*, (1984) 148 ITR 760 (All); *CIT v Kerala Financial Corporation Ltd.*, (1985) 155 ITR 246 (Ker).

In *CIT v Jalan Trading Co. Pr. Ltd.* [(1985) 155 ITR 536 (SC)], the assessee took over the benefit of a sole selling agreement. For that, by way of consideration, the assessee had to pay by way of royalty an amount equivalent to 75 per cent. of their profits. Assessee claimed to have paid Rs. 7,93,837 on that account. The assessee claimed the allowance of that amount as a business deduction. It was held that the payment was, on the facts of the case, for acquisition of a capital asset and was not deductible even on the basis of the concept of real income. The principle of taxation that income-tax is to be levied on the real income cannot be applied for claiming deduction in respect of capital expenditure incurred by the assessee.

In *Park Hotel (P.) Ltd. v CIT* [(1987) 167 ITR 60 (Cal)], rental income realised by the sub-lessee under an unregistered sub-lease deed from the tenants was held not the real income of the assessee-lessee arising from the business.

Page 256: section 4:

After line 11 from top, *add*,—“Thus, if stock-in-trade remains unused or unsold, the mere book appreciation in the value thereof cannot be brought to tax [*State Bank of Travancore v CIT*, (1986) 158 ITR 102, 133 (SC)].”.

Pages 256-257: section 4:

On the subject “*Primary onus*”, reference may also be made to: *CIT v Dr. B. M. Sundaravadanam*, (1984) 148 ITR 333 (Mad); *CIT v S. A. Rajamanickam*, (1984) 149 ITR 85 (Mad); *CIT v Shri Girdharram Hari-ram Bhagat*, (1985) 154 ITR 10 (Guj); *Dr. K. George Thomas v CIT*, (1985) 156 ITR 412, 420 (SC).

Page 257: section 4:

Before the text of section 5, *add*,—

“In *Bedi & Co. Pr. Ltd. v CIT* [(1983) 144 ITR 352 (Karn), special

leave petition granted by the Supreme Court: (1983) 142 ITR (St.) 6], the assessee took a loan from a foreign company under an agreement after obtaining requisite permission from the Reserve Bank of India. The Income-tax Officer treated the amount of loan as commission earned by the assessee on the ground that no interest was paid, no instalment of repayment was implemented and no security was taken by the foreign company. It was held that the revenue failed to discharge the onus that lay heavily on them to prove that loan was by way of commission and not a loan.”

Page 259: section 5:

At the end of the page, *add*,—

“Taxability normally to follow the system of accounting.—Except in the cases where specific provisions in that regard exist, the taxability normally depends upon the system of accounting observed by the assessee. Where the assessee adopts mercantile system of accounting, the taxability is to be ascertained on accrual basis and not on receipt basis [*CIT v Vijay Laxmi Trading Co. Ltd.*, (1984) 147 ITR 372 (Raj); *CIT v Bihar State Agro Industries Development Corporation*, (1986) 158 ITR 96 (Pat). Also see, *Becker Gray & Co. v CIT*, (1983) 139 ITR 293 (Cal)].

Even in the case of assessee following mercantile system of accounting a mere claim by the assessee in respect of an amount without the right to claim cannot form the basis for taxability [*CIT v R. G. Govan & Co.*, (1985) 156 ITR 875 (Del); *CIT v A. B. V. Gowda*, (1986) 157 ITR 697 (Karn)].

On the other hand, where the assessee follows cash system of accounting, the taxability is to be based on receipt basis and not on accrual basis [*CIT v Barjatya Family Charitable Trust*, (1987) 163 ITR 269 (Raj); *Nawn Estates Pr. Ltd. v CIT*, (1982) 137 ITR 557 (Cal)].”

Page 260: section 5:

After serial No. (x), *add*,—

“It may be noted that the provisions of section 4(1)(b)(iii) of the 1922 Act have been discussed in *Dr. Surmukh Singh Uppal v CIT*, (1983) 144 ITR 191 (Punj); *Dr. Surmukh Singh Uppal v CIT*, (1983) 144 ITR 200 (Punj).”

Page 262: section 5:

After the paragraph titled “Charge of income-tax”, *add*,—

“Section 5 vis-a-vis section 64.—Section 5 defines the scope of total income with reference to the different residential qualifications of the assessee. Section 64 enacts deeming provisions for inclusion of other’s income in the income of the assessee. If a particular income does not fall within the gamut of section 5, the same cannot be made taxable by invoking the provisions of section 64. Thus, in the case of a non-resident assessee the income which accrues or arises outside India to a person covered under section 64 cannot be included in the total income of the non-resident [*CIT*

v F. Y. Khambaty, (1986) 159 ITR 203 (Bom)]. In that case, the assessee, a non-resident, was a partner in a firm in Nigeria. His wife and minor children were also partners in that firm. It was held that the income arising to the wife and the minor children from the firm was not includible in the total income of the assessee.”.

Page 263: section 5:

After line 5 from top, *add*,—

“Lottery income arising outside India on or after 1-4-1972 to a resident includible in total income u/s. 5(1)(c).—As a result of insertion of section 2(24)(ix) as also section 56(2)(ib) by the Finance Act, 1972, with effect from 1st April, 1972, income from lottery, which accrues or arises even outside India on or after 1st April, 1972, to an assessee resident in India, has to be included in his total income by virtue of the provisions of section 5(1)(c) and such income has to be treated as ‘Income from other sources’ [*CIT v Chaman Lal*, (1985) 156 ITR 245 (Punj)].”.

Page 264: section 5:

At the end of the page, *add*,—

“In *CIT v Badische Anilin & Soda Fabric A. G.* [(1984) 146 ITR 393 (Bom)], the assessee, a non-resident company, entered into an agreement with another non-resident company B. Under the agreement B was entitled to license the use of the winkler process developed by the assessee to any third party on payment of royalty by B to the assessee. B granted licence to N, a company in India, for the use of such process. The assessee received in India a certain amount on account of royalty which it kept in a bank account by way of royalty income in India and it was includible in his total income by virtue of section 5(2)(a). Assessee’s plea that the amount was received in discharge of a debt due from B was negated.”.

Pages 265-266: section 5:

After serial No. (3), which gives illustrations of constructive receipts, *add*,—

“(4) The assessee had deposits with a bank. The bank credited, in the account of the assessee, interest on such deposits year after year. Although the actual receipt of such interest by the assessee, who maintained cash system of account, was the consolidated interest for four years in the fourth year, it was held that there was receipt, at least constructive, of interest from year to year and the consolidated amount could not all be taxed in the fourth year itself, but the interest so received had to be included in the total income of the respective years [*Indukal Kanji Parekh v CIT*, (1987) 163 ITR 102 (Guj)].”.

Page 266: section 5:

Before line 10 from the bottom, *add*,—

“What is relevant is the initial character of the receipt and not the head

under which the amount is credited in the account books of the assessee. If the initial character of the receipt was a trading receipt, the fact that it is placed in a suspense account for some time and thereafter, in a subsequent year, to the profit and loss account of the assessee would not affect the character of the receipt. Such receipt is taxable for the year in which it was initially received [*CIT v Spunpipe & Construction Co. (Baroda) Pr Ltd.*, (1983) 141 ITR 246 (Guj), special leave petition granted by the Supreme Court: (1984) 150 ITR (St.) 80].”.

Page 270: section 5:

After line 7 from top, *add*,—

“In *Indian Aluminium Co. Ltd. v CIT* [(1983) 140 ITR 114 (Cal)], the assessee entered into an agreement with a Canadian company for the supply of know-how. Under the agreement, the fee for such supply was to be paid in Canada. After taking permission from the Reserve Bank, the assessee procured a bank demand draft and sent it by post to Canadian company at Canada. It was held that there was no ‘receipt’ in India by the Canadian company. The post office acted as the agent of the assessee and not of the Canadian company.”.

Page 272: section 5:

On the subject of “‘*Accrues*’, ‘*arises*’ or ‘*is received*’—*distinction*”, reference may also be made to *CIT v A.B.V. Gowda*, (1986) 157 ITR 697 (Karn).

Page 274: section 5:

Line 21 from top: It may be noted that the observation on tax avoidance in *CIT v A. Raman & Co.* [(1968) 67 ITR 11 (SC)] and other cases has been disapproved by a larger Bench of the Supreme Court in *McDowell & Co. Ltd. v CTO* [(1985) 154 ITR 148, 160 (SC)].

Page 276: section 5:

On the subject “*No right to postpone*”, reference may also be made to *Neroth Oil Mills Co. Ltd. v CIT*, (1987) 166 ITR 418, 427 (Ker).

On the subject “*Accrual flowing from an agreement, the whole agreement to be read for correct ascertainment*”, reference may also be made to *Neroth Oil Mills Co. Ltd. v CIT*, (1987) 166 ITR 418 (Ker).

Pages 277-278: section 5:

On the subject “*No reopening of account favoured*”, reference may also be made to *CIT v Karamchand Premchand Pr. Ltd.*, (1985) 152 ITR 94 (Guj).

Page 278: section 5:

In lines 7 and 6 from the bottom, in place of “*CIT v Bhagwan Das Gopal Prasad*, (1980) 15 CTR (Pat) 296”, *substitute*,— “*CIT v Kanchanlal L.*

Talsania, (1983) 141 ITR 284 (Bom); *Modern Stores v CIT*, (1986) 157 ITR 589 (AP). The Patna High Court in *CIT v Bhagwan Das Gopal Prasad* [(1983) 139 ITR 430 (Pat)] and the Karnataka High Court in *Smt. Indubai Manoharlal v CIT* [(1987) 163 ITR 750 (Karn)] have distinguished the Supreme Court decision in *Ashokbhai's case* [(1965) 56 ITR 42 (SC)] on its own facts.”.

Page 279: section 5:

In line 6 from top, after “57 ITR 185 (SC)”, *add,—*; *All India Film Distributors Pr. Ltd. v CIT*, (1983) 139 ITR 358 (Del)”.

Page 281: section 5:

At the end of line 7 from top, *add,—* “In this context, the date of the announcement of the award by the Collector is material and not the date when the award was signed [*CIT v Ramadhar*, (1985) 156 ITR 755 (Del)].”.

Lines 12-13 from top: The decision in *CIT v Hindustan Housing & Land Development Trust Ltd.* [(1977) 108 ITR 380 (Cal)] has been affirmed by the Supreme Court in *CIT v Hindustan Housing and Land Development Trust Ltd.* [(1986) 161 ITR 524 (SC)].

In line 15 from top, after “117 ITR 849 (Guj)”, *add,—*; *Addl. CIT v Smt. Bhavani Devi Soni*, (1982) 136 ITR 333 (AP); *Mahalaxmi Sugar Mills Co. Ltd. v CIT*, (1986) 157 ITR 683 (Del)”.

Where the assessee's right to receive compensation is under dispute, the amount of compensation cannot be said to accrue to the assessee till the dispute is adjudicated [*CIT v Hercules Trading Corporation*, (1983) 143 ITR 504 (Cal)].

In the facts of *Bombay Burmah Trading Corporation Ltd. v CIT* [(1987) Taxation 85(3)-262 (Bom)], it has been held that the assessee's right to compensation arose only on the date on which the award was made.

Page 282: section 5:

In line 16 from the bottom, after “(1973) 87 ITR 22 (Mad)”, *add,—* “; *CIT v Santi Devi*, (1983) 139 ITR 489 (Cal); *CIT v Janardhan Reddy*, (1984) 145 ITR 303 (AP); *CIT v Sachindramohan Nandy*, (1984) 146 ITR 597 (Cal); *CIT v A. B. V. Gowda*, (1986) 157 ITR 697 (Karn); *CIT v L. Venkatapathy*, (1987) 163 ITR 178 (Mad). ”.

The decision in *T.N.K. Govindarajulu Chetty v CIT* [(1973) 87 ITR 22 (Mad)] has been affirmed in *CIT v T.N.K. Govindarajulu Chetty* [(1987) 165 ITR 231 (SC)].”.

Page 282: section 5:

In line 12 from bottom, *add,—*

“Similarly, the interest awarded under the Requisitioning and Acquisition Act, 1952, has been held to be spread over the period for which it was awarded [*Om Parkash v CIT*, (1984) 148 ITR 180 (Del)]. Same is the

case in respect of interest under Madhya Bharat Jagirs Act, 1951 [*CIT v S. C. Angre*, (1986) 157 ITR 261 (MP)].”.

Page 283: section 5:

In line 11 from top, after “69 ITR 159 (Mys)”, *add*,— “ ; *K. Sadasiva Krishna Rao v CIT*, (1983) 144 ITR 270 (AP); *Vittal Reddy v CIT*, (1987) 165 ITR 673 (AP)” [on the subject of accrual of interest under section 28 of the Land Acquisition Act].

However, if any such award has been appealed against, the accrual is postponed to the date of appellate judgment [*CIT v Syed Khadrudin Ali Khan*, (1983) 144 ITR 266 (AP)].

On the other hand, according to the Delhi High Court, the assessee’s right to receive interest under section 28 accrues to him day to day throughout the years from the date of taking over possession by the Collector till payment of compensation and for the purpose of assessment proportionate amount thereof is to be spread over and taxed for the appropriate year [*CIT v Deoki Nandan & Sons*, (1982) 138 ITR 225 (Del)].

Similar view has been taken by the Full Bench of the Kerala High Court in *Peter John v CIT* [(1986) 157 ITR 711 (Ker—FB)] holding that interest accrued from day to day. The Full Bench overruled the decisions in *M. Jai-ram v CIT* [(1979) 117 ITR 638 (Ker)] and *George Paul Puthuran v CIT* [(1980) 126 ITR 168 (Ker)].

Also see, *CIT v S. Sajit Singh & Sons*, (1987) 166 ITR 377 (Raj).

Page 283: section 5:

In line 3 from the bottom, after “117, 133-4 (Mad)”, *add*,— “The decision of the Kerala High Court in *State Bank of Travancore’s* case [(1977) 110 ITR 336 (Ker)] has impliedly been approved by the Supreme Court in *State Bank of Travancore v CIT* [(1986) 158 ITR 102 (SC)]. In that Supreme Court case, the assessee in the course of its banking business used to charge interest on advances, which it considered doubtful of recovery and which was termed as “sticky advances” by debiting the concerned parties but instead of carrying it to its profit and loss account, credited the same to a separate account called “interest suspense account”. It was held that the interest on such advances accrued to the assessee and the same was includible in its income. Suspended animation following inclusion of the amount in the suspense account does not negate accrual and after the event of accrual, corroborated by appropriate entry in the books of account, on the mere *ipse dixit* of the assessee, no reversal of the situation can be brought about.

In so holding, the Supreme Court approved *Catholic Bank of India v CIT* [(1964) KLT 653 (Ker)], *CIT v Confinance Ltd.* [(1973) 89 ITR 292 (Bom)] and *James Finlay & Co. v CIT* [(1982) 137 ITR 698 (Cal)]. The Supreme Court explained *CIT v Shoorji Vallabhdas & Co.* [(1962) 46 ITR 144 (SC)] and *CIT v Birla Gwalior Pr. Ltd.* [(1973) 89 ITR 266 (SC)] and followed *Morvi Industries Ltd. v CIT* [(1971) 82 ITR 835 (SC)]. The

Supreme Court disapproved *CIT v Devi Films Pr. Ltd.* [(1983) 143 ITR 386 (Mad)] and distinguished *CIT v Motor Credit Co. Pr. Ltd.* [(1981) 127 ITR 572 (Mad)] and *CIT v Ferozepur Finance Pr. Ltd.* [(1980) 124 ITR 619 (Punj)]. Also see, *CIT v Oriental Bank of Commerce Ltd.*, (1987) 62 CTR (Del) 197.

In the facts of the following cases, it was held that the interest had accrued:—

- (1) *CIT v Kerala Financial Corporation*, (1985) 155 ITR 228 (Ker);
- (2) *CIT v Kerala Financial Corporation Ltd.*, (1985) 155 ITR 246 (Ker).

In the facts of *CIT v Corporation Bank Ltd.* [(1986) 157 ITR 509 (Karn)], interest credited to “interest suspense account” on doubtful loans was held not assessable to tax in view of the departmental circular in that regard.

It may be well to note that the gist of these circulars and their subsequent withdrawal has been referred to in 158 ITR at pages 138-39 of the reports.

However, where the assessee did not, discontinued to, charge interest on the *bona fide* belief that the debt was very much doubtful, interest cannot be said to have accrued [*CIT v Raigarh Jute Mills Ltd.*, (1981) 132 ITR 702 (Cal); *Calcutta Investment Co. Ltd. v CIT*, (1983) 142 ITR 120 (Cal). Also see, *CIT v N. D. Radha Kishan & Co.*, (1983) 140 ITR 860 (Punj)].

It seems that the decision in *CIT v Vijay Laxmi Trading Co. Ltd.* [(1984) 147 ITR 372 (Raj)] needs reconsideration.

The following departmental circular is relevant on the point of chargeability of interest on sticky loans:—

*‘Assessment of State Financial Corporation—Change in method of accounting of interest from mercantile to cash—Regarding.—*The Supreme Court has in its judgment in the case of *State Bank of Travancore v CIT* [1986] 158 ITR 102 held that the interest accruing on sticky loans is taxable to income-tax on accrual basis where the assessee follows the mercantile system of accounting.

2. Some State Financial Corporations have changed the method of accounting of interest from mercantile to cash basis.

3. State Financial Corporations are governed by the directives of the Reserve Bank of India and IDBI. If these authorities are satisfied that the change in the system of accounting of interest from mercantile to cash basis by the concerned State Financial Corporation is legal, valid and *bona fide*, the Income-tax Department may accept the cash system of accounting of interest.

4. These instructions may be brought to the notice of all the officers working in your charge.’ [Circular No. 491, dated 30th June, 1987.]”

Page 284: section 5:

After line 19 from top, *add*,—

“Other cases about accrual of interest income are:—

1. *CIT v Naskarpara Jute Mills Co. Ltd.*, (1983) 141 ITR 384 (Cal) [interest under section 34 of the Civil Procedure Code, 1908, accrues on the date of the decree]. Also see, *CIT v Bengal Jute Mills Co. Ltd.*, (1987) 165 ITR 631 (Cal).
2. *CIT v Public Utilities Investment Trust Ltd.*, (1983) 143 ITR 236 (Bom) [interest on debenture of a foreign company, remittance impeded by legislation, accrues only when the impediment is removed]. Also see, *CIT v Public Utilities Investment Trust Ltd.*, (1983) 143 ITR 257 (Bom).
3. *Fazilka Electric Supply Co. Ltd. v CIT*, (1983) 143 ITR 551 (Del) [interest on compensation for take over under the Indian Electricity Act, 1910, accrues, year to year, with reference to the date of take over of the undertaking by the Government even in a case where the matter was referred to arbitration and the award was given later].
4. *CIT v M. K. KR. Muthukaruppan Chettiar*, (1984) 145 ITR 175 (Mad) [interest under section 243 of the 1961 Act on delayed refund accrues *de die in diem* and not on the date on which it is paid].
5. *CIT v Imperial Chemical Industries*, (1984) 145 ITR 447 (Cal) [interest payable on fulfilment of certain conditions accrues only on such fulfilment].
6. *Smt. Gunwantibai Ratilal v CIT*, (1984) 146 ITR 140 (MP), special leave petition dismissed by the Supreme Court: (1985) 156 ITR (St.) 43 [interest on advances to a firm—held accrued].
7. *CIT v Calcutta Credit Corporation Ltd.*, (1986) 158 ITR 536 (Cal) [interest on investment made by the receiver without direction from the court].
8. *Sarupchand Hukamchand Pr. Ltd. v CIT*, (1982) 133 ITR 295 (MP), special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 13 [interest was not recoverable by filing a suit, held not accrued]. Also see, *CIT v Sarupchand Hukamchand Pr. Ltd.*, (1984) 19 Taxman 484 (MP).”.

Page 284: section 5:

At the end of the page, *add*,—

“(xiii-a) *Interest on cumulative deposit schemes of Government undertakings—taxability—departmental circular.*—“The issue regarding taxability of interest on cumulative deposit schemes announced by Government undertakings has been considered by the Board. The point for consideration is whether interest on cumulative deposit scheme would be taxable on accrual basis for each year during which the deposit is made or on receipt basis in the year of receiving the total interest.

2. The Central Government has decided that the interest on cumulative deposit schemes of Government undertakings should be taxed on accrual basis annually.

3. The Government undertaking will intimate the accrued interest to the depositors so as to enable them to disclose it in their returns of income filed before the income-tax authorities.' [Circular No. 371, dated 21st November, 1983.]

(xiii-b) *Interest on National Deposit Scheme—taxability—departmental circular.*—'Taxability of interest on National Deposit Scheme.—The National Deposit Scheme was launched by the Central Government with effect from 30-7-1984. Interest on deposits under this Scheme is paid or compounded on half-yearly basis. The Central Government has amended the Scheme to provide that in respect of deposits made in the financial year 1984-85, interest up to 31-3-1985 will be deemed to have accrued on 31-3-1985, even though the actual payment or compounding is made on half-yearly basis.

2. The Board is of the view that such interest is taxable in the year of accrual.' [Circular No. 406, dated 21st January, 1985.]

(xiii-c) *Interest on cumulative deposit schemes of private sector undertakings—taxability—departmental circular.*—'The issue regarding taxability of interest on cumulative deposit schemes of the private sector undertakings has been considered by the Board. The point for consideration is whether interest on cumulative deposit schemes would be taxable on accrual basis for each year during which the deposit is made or on receipt basis in the year of receiving the total interest.

2. The Central Government has decided that interest on cumulative deposit schemes of private sector undertakings should be taxed on accrual basis annually.

3. The private sector undertakings will intimate the individual depositors about the accrued interest so as to enable them to disclose it in their returns of income filed before the income-tax authorities.' [Circular No. 409, dated February 12, 1985.]"

Page 285: section 5:

At the end of paragraph titled "(xiv) In case of salary and wages", add,—

"Where a perquisite in the shape of rent-free accommodation was provided to the employee by the employer, such provision, if not refused at the initial time, results in the accrual of income even though the employee might not have utilised it [CIT v Bawa Singh Chauhan, (1984) 150 ITR 8 (Del)].

For facts and decision about accrual of disputed remuneration, see CIT v Smt. V. Sikka, (1984) 149 ITR 73 (Del)."

Page 285: section 5:

On the point of accrual in case of sales tax collection, etc., reference may also be made to *CIT v Spunpipe & Construction Co. (Baroda) Pr. Ltd.* [(1983) 141 ITR 246 (Guj)], special leave petition granted by the Supreme Court: (1984) 150 ITR (St.) 80; *Sirsa Industries v CIT* [(1984) 147 ITR 238 (Punj)].

Page 287: section 5:

After serial No. 23, dealing with cases about time of accrual, *add,—*

“24. *CIT v Chanchani Bros. (Contractors) Pr. Ltd.*, (1986) 161 ITR 418 (Pat) [bills presented for contract work done for Government—accrual only when bills are accepted].

25. *CIT v Bhartiya Steel Industries*, (1987) 164 ITR 388 (Cal) [supplementary bills].

26. *CIT v Madhavan Nayar*, (1983) 13 Taxman 364 (Ker) [import entitlement].

27. *CIT v New Horizon Sugar Mills Pr. Ltd.*, (1983) 140 ITR 1003 (Mad) [(1) refund of excise duty accrues on receipt, (2) additional amount in respect of export earlier made accrues on receipt].

28. *CIT v Ganesh Stores*, (1986) 162 ITR 493 (MP) [compensation for breach of contract accrues when the amount is ascertained or admitted].

29. *CIT v Smt. Geeta Sanghi*, (1983) 142 ITR 834 (MP) [hire charges accrue when amount ascertained and admitted].

30. *Addl. CIT v Chandrakant D. Patel*, (1983) 139 ITR 233 (MP), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 183 [sales tax refund accrues when the claim therefor has been upheld].

31. *CIT v Martin & Harris Pr. Ltd.*, (1985) 154 ITR 460 (Cal) [devaluation gain or loss, when accrues].

32. *Trikamlal v CIT*, (1982) 134 ITR 450 (MP) [claim for unliquidated damages accrues when the amount is ascertained or admitted].

33. *Salig Ram Kanhaya Lal v CIT*, (1982) 133 ITR 915 (Punj), special leave petition dismissed by the Supreme Court: (1983) 143 ITR (St.) 65 [decretal amount, when accrues].

34. *CIT v P. Mariappa Gounder*, (1984) 147 ITR 676 (Mad) [*mesne* profits accrue at the time of actual quantification].

35. *Jaiswal Ceramic Industries v CIT*, (1987) 33 Taxman 204 (Pat) [value of the bricks sold, where the assessee has to file money suit for realisation of the price of the goods sold and delivered].

Question of fact.—Ordinarily, the finding of the Tribunal regarding the time of accrual of a particular income is a finding of fact [*CIT v Indo-Afghan Agencies*, (1984) 150 ITR 572 (Punj); *CIT v Gunwantibai Rati-lal*, (1986) 53 CTR (MP) 220].

Question of law.—The question about the year of accrual has been held to be a question of law [*Jhansi Electric Supply Co. Ltd. v CIT*, (1987) 163 ITR 720 (All)].”

Page 291: section 5:

After serial No. 6, *add*,—

“7. *CIT v Atlas Steel Co. Ltd.*, (1987) 164 ITR 401 (Cal) [consideration for know-how supplied outside India accrues outside India].

8. *Mansinghka Bros. Pr. Ltd. v CIT*, (1984) 147 ITR 361 (Raj) [loan was advanced in a Part B State with a right to recover such loan at the same Part B State—interest held accrued in that Part B State].

9. *CIT v Kirloskar Oil Engines Ltd.*, (1982) 135 ITR 762 (Bom) [profit on sale of material supplied on the basis of assessee's order accepted in England by the foreign seller and sale proceeds received in England—held, profit accrued outside India as the *situs* of contract was outside India].

10. *Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal) [know-how information imparted in Canada and fees therefor paid in Canada—no accrual in India].

11. *CIT v Domint Works GMBH*, (1984) 146 ITR 625 (Mad) [collaboration agreement—part of technical fees held to relate to services in India].”.

Page 291: section 5:

At the end of paragraph titled “*Accrual of income—effect of book entries*”, *add*,—

“It is well-settled that the way in which entries are made by the assessee in its books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee might, by making entries which were not in conformity with the proper principles of accountancy, have concealed profit or showed loss and the entries made by him could not, therefore, be regarded as conclusive one way or the other [*State Bank of India v CIT*, (1986) 157 ITR 67, 71 (SC)].”.

Page 292: section 5:

Before line 12 from bottom, *add*,—

“In the facts of *Dewan Gian Chand v CIT* [(1982) 138 ITR 138 (Punj)], it was held that there was foregoing of the income during the accounting year itself and therefore there was no accrual of such income.

In the facts of *CIT v Godhra Electricity Co. Ltd.* [(1983) 140 ITR 657 (Guj)], it was held that there was no foregoing or giving up of its right by the assessee in respect of the income.

In *Sujan Singh Sadana v CIT* [(1982) 136 ITR 496 (Punj)], it was held that no evidence was led by the assessee to establish its claim that the amount of commission was foregone on account of business or commercial expediency.

Also see, *CIT v North West Coal Ltd.*, (1987) 167 ITR 419 (Cal); *Golcha Properties (P.) Ltd. v CIT*, (1987) 166 ITR 259, 267 (Raj).”.

Page 297: section 6:

At the end of the paragraph titled “*Legislative amendment*”, add,—

“Section 6 has also been amended by the Finance Act, 1982, with effect from 1st April, 1983.

For the effect of the amendments made by the Finance Act, 1982, see, pages xiv and xv of Vol. 4.

Annotation portion under section 6 should be read subject to such amendments.”.

Pages 299-301: section 6(1)(b):

The provisions of section 6(1)(b), which has been omitted by the Finance Act, 1982, with effect from 1st April, 1983, have also been discussed in *Dhirajlal Haridas v CIT* [(1982) 138 ITR 570 (Bom)].

Pages 302-303: section 6(2):

At the end of paragraphs titled “*Control and management*”, add,—

“In this context, the mere presence of the managing partner in India cannot by itself lead to the inference that control and management of the affairs of the firm have been exercised in India [*CIT v Chitra Palayakat & Co.*, (1985) 156 ITR 730 (Mad)].”.

Page 306: section 6(3):

At the end of the page, add,—

“‘Affairs’—implication of.—The word ‘affairs’ within the meaning of section 6(3) means affairs which have some relation to income [*CIT v Bank of China*, (1985) 154 ITR 617, 624 (Cal)]. In that case, the assessee-company in liquidation had income from interest and rent in India. It was held that the affairs relating to the earning of such income were controlled and managed in India by the official liquidator. Therefore, the assessee company must be deemed to be resident in India.”.

Page 307: section 6(5):

At the end of the page, add,—

“The fact that the assessee had a previous year for the purposes of the assessments in the earlier years under section 3(1)(c) will not stand in the way of the application of section 6(5) for the purpose of determination of his residential status [*CWT v P. R. Shanmugam*, (1985) 153 ITR 330, 338 (Mad)].”.

Page 308: section 6(6):

At the end of paragraphs titled “*Legislative history*”, add,—

“In the facts of *Dr. Surmukh Singh v CIT* [(1983) 144 ITR 191 (Punj)], a case under the 1922 Act provisions it was held that the status of the assessee was correctly taken as ‘resident but not ordinarily resident’ negating assessee’s contention that his status should be taken as ‘non-resident’.”.

Page 310: section 7:

For the last line of footnote No. 2, giving the rate of interest fixed in relation to provident fund under rule 6(b) of Part A of Schedule IV to the 1961 Act, *read,—*

| | | | | | | |
|-----------|---------|------|----|---------|-----|------------|
| "27-10-78 | 31-8-81 | 8½% | SO | 615(E), | dt. | 27-10-1978 |
| 1-9-81 | 1-6-83 | 9% | SO | 676(E), | dt. | 1-9-1981 |
| 2-6-83 | 22-8-84 | 9½% | SO | 388(E), | dt. | 2-6-1983 |
| 23-8-84 | 17-6-85 | 10% | SO | 616(E), | dt. | 23-8-1984 |
| 18-6-85 | 31-3-86 | 10½% | SO | 466(E), | dt. | 18-6-1985 |
| 1-4-86 | — | 12% | SO | 120(E), | dt. | 27-3-1986" |

Page 311: section 7:

The subject-matter "*Tax deducted at source out of dividend income—when deemed income received*" has fully been dealt with under section 198 at pages 3779 to 3782 of Vol. 4.

Page 312: section 8(a):

At the end of the paragraph titled "*Provisions analysed—section 8(a)*", *add,—*

"In *B. V. Venkatesam Chetty v CIT* [(1985) 154 ITR 217 (AP)], the assessee was following cash system of accounting with the financial year as previous year. Although, the relevant dividend was declared on 28-3-1970, the dividend warrant was actually received by the assessee on 11-5-1970. It was held that having regard to the cash system of accounting followed by the assessee, it was not proper to include the dividend income in the assessment year 1970-71.

Dividend received in foreign currency.—Where a resident assessee received a dividend from a foreign company in foreign currency, such dividend for the purpose of assessment had to be converted in rupee currency at the exchange rate prevailing on the date of receipt of the dividend [*D. A. Graham & N. G. F. Graham v CIT*, (1985) 154 ITR 879 (Karn)].

That was so up to 31-10-1977. With effect from 1-11-1977, the material date is the last day of the month immediately preceding the month in which the dividend is declared, distributed or paid by the company [see rule 115 at pages 5546-47 of Vol. 6].

Undistributed profit taxed u/s. 104—distribution of—cannot again be taxed in the hands of the shareholder.—In *S. Radhakrishnan v ITO* [(1985) 156 ITR 538 (Mad)], the counsel on behalf of the assessee took the plea that once the undistributed profits had suffered tax under section 104, the same cannot, after distribution in favour of the assessee, assume a different character, thereby enabling the revenue to tax it once over again in the hand of the assessee shareholder. The plea was upheld."

Pages 314-315: section 8:

At the end of paragraph titled "*Dividend in kind*" add,—

"However, in *CIT v Bharat Nidhi Ltd.* [(1984) 149 ITR 245 (Del)], it has been held that in considering the withdrawal of rebate in super-tax payable by a company under the Finance Act, 1959, on the basis of the dividend distributed by it, the amount of dividend should be taken to be what is actually distributed in cash *plus* the face value of the shares distributed by it as dividend *in specie*. It would not be correct to take the market value or the average value of the shares so distributed."

Pages 315-316: section 8:

At the end of paragraphs titled "*Dividend income to be taxed in the hands of real owner of shares*", add,—

"Dividend declared after the date of transfer of shares cannot be taxed in the hands of the transferor-assessee, who is a mere trustee for the transferee in that behalf [*CIT v R. Dalmia*, (1982) 135 ITR 346 (Del)]."

Pages 323-324: section 9:

At the end of the paragraphs titled "*Legislative amendments*", add,—

"Further amendments to section 9 have been made by—

—the Finance Act, 1983 (11 of 1983), and

—the Taxation Laws (Amendment) Act, 1984 (67 of 1984).

For the effect of the aforestated amendments, see, pages xv to xvii of Vol. 4.

The annotation portion under this section should be read subject to such amendments."

Page 325: section 9:

Before the paragraph titled "*Other related provisions*", add,—

"Double Taxation Avoidance Agreement to prevail over section 9.—It is true that under section 9(1)(i) all income accruing or arising whether directly or indirectly to or from any business connection in India, or other income mentioned in that section is deemed to accrue or arise in India. But the charging provisions of section 4, as well as section 5 defining the total income of a person, either a resident or a non-resident, are expressly made 'subject to the provisions of the Act', which means that these are subject to the provisions of section 90. By necessary implication, these are subject to the terms of the Double Taxation Avoidance Agreement, if any, entered into by the Government of India with a foreign Government. Thus, the provisions of such an Agreement prevails over section 9. In effect, the profits of a foreign company can be made liable to tax under section 9 except to the extent allowed by such Agreement [*CIT v Visakhapatnam Port Trust*, (1983) 144 ITR 146, 159, 160 (AP)]."

Page 335: section 9(1)(i):

At the end of line 8 from top, add,— "The principle enunciated by the

Supreme Court, in *Carborandum Co.'s* case [(1977) 108 ITR 335 (SC)], has been applied in *CIT v Hegde & Golay Pr. Ltd.*, (1987) 163 ITR 635 (Karn) and *ITO v Shriram Bearing Ltd.*, (1987) 165 ITR 419 (Cal). Also see, *Massey Ferguson Parkins Ltd. v CIT*, (1987) 165 ITR 612 (Mad).

In the facts of *CIT v Atlas Steel Co. Ltd.* [(1987) 164 ITR 401 (Cal)], it was held that the transaction relating to supply of secret knowledge and know-how took place entirely outside India and the payment in regard thereto did not result in accrual of any income to the assessee, a non-resident company, in India.”

Page 339: section 9(1)(i):

After line 4 from top, *add*,—

“(7) Under a collaboration agreement, remuneration was paid in sterling to the foreign collaborator for rendering technical advice in London. Held, there was no business connection because there was no element of continuity between the business of the non-resident and the activity in India in respect of remuneration [*Addl. CIT v New Consolidated Gold Fields Ltd.*, (1983) 143 ITR 599 (Pat)].

(8) The assessee-company entered into an agreement with a foreign company for obtaining latter's services as a marketing consultant. It was found by the Tribunal that the foreign company was to render services outside India and that payments were remitted to U.K. It was held on facts that there was no business connection. Therefore, the royalty income received by the foreign company from the assessee was not assessable in India [*CIT v Usha Martin Black (Wire Ropes) Ltd.*, (1984) 148 ITR 236 (Cal)].

Also see, *CIT v Visakhapatnam Port Trust*, (1983) 144 ITR 146 (AP); *T. I. & M. Sales Ltd. v CIT*, (1985) 151 ITR 286 (Cal), affirmed in *CIT v T. I. & M. Sales Ltd.*, (1987) 166 ITR 93 (SC); *Prem Nath Diesels Grainvaying Division v CIT*, (1986) 159 ITR 575 (Del); *CIT v Assam Consolidated Tea Estate Limited*, (1987) 167 ITR 215 (Cal).”

Page 340: section 9(1)(i):

After the paragraph titled “*Source of dividend income*”, *add*,—

“Income from undisclosed source also covered by section 9(1)(i).— Even if there is no known or disclosed source of income, the income may still be deemed to have accrued to a non-resident in India from undisclosed sources if it is actually found in the hands of his statutory agent having nexus or relationship, with the non-resident principal [*Hazoor Singh v CIT*, (1986) 160 ITR 746 (Punj)].”

Page 348: section 9(1)(i):

At the end of paragraphs titled “*Relevant rule*”, *add*,—

“It is true that rule 10 must be interpreted bearing in mind its object of arriving at an accurate ascertainment of the income of a non-resident in India. But it would not be possible to interpret rule 10(ii) in such a manner

that a transaction of the non-resident, which may have taken place outside India, and which may be unconnected with the business activities of the company in India, can be eliminated in calculating its total income. Rule 10(ii) requires that one should first ascertain the ratio of an assessee's receipts in India to its total world receipts. This ratio must be applied to the assessee's total world income in order to arrive at the assessee's income in India. To ascertain the world income of the assessee, one must necessarily take into account receipts and outgoings outside India. They cannot be ignored. It is possible that in a given case a non-resident company may carry on diverse business activities which are separable and in respect of which it has kept separate accounts. Out of its several businesses, it may carry on only one business in India. In such a case, if an activity is carried on wholly outside India, it may be ignored while arriving at the calculation of the profits of the non-resident in India; for example, if a company carries on the business of manufacturing shoes as well as armaments and it keeps separate accounts in respect of both these activities, then if such a company only carries on the activity of manufacturing shoes in India, it may be possible to say that for the purpose of rule 10(ii) the activity of manufacturing armaments may be ignored for arriving at the income of the company in India. When the company carries on the same business both in India and abroad, it is not possible to dissect its account and to eliminate from this account those items either on the credit or on the debit side which have no connection with its trading activities in India. To do so would defeat the very device under rule 10(ii) to determine the correct ratio of income of the non-resident in India in relation to its total world income [*CIT v Indian Textile Engineers Pr. Ltd.*, (1983) 141 ITR 69, 79-80 (Bom)].

The formula laid down by rule 10(ii) is only to determine as to which part of such total income has accrued or has arisen in India. For such determination the items which have been held to be included in the total income of the assessee must necessarily be considered to be the receipts of the assessee's business [*CIT v Shinwa Kaium Kaisha Ltd.*, (1987) 165 ITR 270, 274 (Cal)].

As a matter of fact, where the computation is made under rule 10(ii), the application of the provisions of section 44C is not warranted [*CIT v Saudi Arabian Airlines*, (1985) 155 ITR 65 (Bom)].

The provisions of rule 10 have also been discussed in *CIT v Swedish East Asia Co. Ltd.*, (1981) 127 ITR 148 (Cal)].”.

Page 353: section 9(1)(i):

In line 10 from the bottom for “47 ITR 481 (Mad)”, read “47 ITR 841 (Mad)”.

In the last line of the paragraph titled “*Difficulty not to preclude apportionment*”, after “107 ITR 182 (Cal)”, add,— “ ; *CED v Mrudula Naresh-chandra*, (1986) 160 ITR 342, 353 (SC).”.

Page 354: section 9(1)(i):

At the end of paragraph titled "*Question of fact*", add,—

"The question whether any part of the activity was carried on in India or not is essentially a question of fact [*Skoda Export v Addl. CIT*, (1983) 143 ITR 452, 457 (AP)].".

Page 355: section 9(1)(i):

After serial No. (5), add,—

"(6) The Tribunal, on the facts of the case, evaluated the services rendered in India by the foreign company after referring to the relevant clauses in the know-how agreement and apportioned 20 per cent. of technical fees received by the foreign company as accruing in India. The Tribunal was held justified in doing so [*CIT v Domint Works GMBH*, (1984) 148 ITR 625 (Mad)].

(7) After taking everything into consideration and looking particularly into the large number of services to be rendered outside India as compared to the comparatively fewer services rendered in India, the Tribunal estimated 10 per cent. of the net profits as income accruing or arising in India. That estimate was upheld [*CIT v Bertrams Scott Ltd.*, (1987) 31 Taxman 444 (Cal)].".

Page 369: section 9(1)(vi):

At the end of the page, add,—

"**Royalty—implication of.**—It may be noted that the expression 'royalty' has been defined in *Explanation 2* to section 9(1)(vi) for the purpose of that clause. For the implication of the expression 'royalty' where there is no statutory definition thereof, reference may be made to *CIT v Ahmedabad Mfg. & Calico Ptg. Co.* [(1983) 139 ITR 806 (Guj)]; *CIT v Dunlop Rubber Co. Ltd.* [(1983) 142 ITR 493 (Cal)]; *CIT v Stanton & Stavelly (Overseas) Ltd.* [(1984) 146 ITR 405 (Cal)]; *Citizen Watch Co. Ltd. v IAC* [(1984) 148 ITR 774 (Karn)].

In the facts of *N. V. Philips Gloeilampenfabrieken Eindhoven v CIT* [(1987) 65 CTR (Cal) 103], it has been held that the information agreed to be supplied by the assessee in respect of working methods and manufacturing processes of the product were exclusive information and knowledge available to the assessee and not generally disseminated and payment in respect thereof would bear the character of royalty."

Page 371: section 9(1)(vii):

At the end of the page, add,—

"Having regard to the language used in section 9(1)(vii), the income by way of fees for technical services arising out of even a business connection should be taken to have been covered by section 9(1)(vii) and not by section 9(1)(i), section 9(1)(vii) being a special provision for that type of income [*CIT v Copes Vulcan Inc.*, (1987) 167 ITR 884 (Mad)].

Paragraph 11 of circular No. 21 of 1969 [reproduced at pages 852-53 of Vol. 1] withdrawn.—The Board has issued circular No. 382, dated 4th May, 1984, which is as under:—

'Taxation of shares of Indian companies allotted to non-residents in consideration for the purchase of machinery and plant delivered abroad.—Clauses (vi) and (vii) have been inserted in sub-section (1) of section 9 of the Income-tax Act, 1961, by the Finance Act, 1976, with effect from June 1, 1976. As a result, income by way of royalties and fees for technical services is deemed to accrue or arise in India in the cases specified under these provisions.

There are, however, two exceptions to the above general position. Firstly, lump sum consideration paid under approved agreements made before April 1, 1976, for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark, or other similar property is not deemed to accrue or arise in India, and secondly, income by way of fees for technical services under approved agreements made before that date is not deemed to accrue or arise in India.

2. In this context, certain questions have been raised as to whether the clarifications contained in Public Circular No. 21 of 1969 would be applicable. In para. 11 of this circular, it was stated that in a case where shares are issued at the time of incorporation of an Indian company in consideration for the transfer abroad of technical know-how or services, or delivery abroad of machinery and plant, and the payment is not taxable under section 5(2)(b) of the Income-tax Act as income accruing or arising or deemed to accrue or arise in India, no attempt should be made by the Department to bring to tax the profits or gains on such transactions merely on the ground that the situs of the shares is in India.

3. As a result of the amendments brought about by the Finance Act, 1976, royalties or fees for technical services paid in pursuance of collaboration agreements entered into on or after April 1, 1976, are chargeable to tax under section 5(2)(b) of the Income-tax Act. The contents of para. 11 of Circular No. 21 of 1969 would cover only cases where shares in Indian companies are allotted to a non-resident for delivery abroad of machinery and plant. Where shares in Indian companies are allotted in consideration for the machinery and plant, the income embodied in the payments would be received in India as the shares in the Indian companies are located in India and would accordingly attract liability to income-tax as income received in India.

4. In view of the legal position, the concessions in paragraph 11 of the said circular are in the nature of extra legal concessions and the Board have decided to withdraw the same. Paragraph 11 of the Public Circular No. 21 may, therefore, be treated as withdrawn with immediate effect." [Circular No. 382, dated May 4, 1984.]".

Page 399: section 10:

On the subject "*Exemption to be liberally construed*", reference may also be made to *P. Alikunju, M. A. Nazeer Cashew Industries v CIT*, (1987) 166 ITR 804 (Ker).

Page 400: section 10:

After line 17 from top, *add*,—

"In order to be entitled to an exemption an assessee must strictly come within the terms of the provisions under which such exemption is being claimed. But the provisions must be construed reasonably in the context of the purpose for which such provisions have been enacted [*CIT v Sutna Stone & Lime Co. Ltd.*, (1982) 138 ITR 37 (Cal)]. Also, it would not be possible for the court to place an elastic interpretation and enlarge the scope of the provision [*CIT v Satellite Engineering Ltd.*, (1982) 136 ITR 607 (Guj)]. Also see, *R. Natarajan v CED*, (1982) 138 ITR 178 (Mad); *Vidarbha Cooperative Marketing Society Ltd. v CIT*, (1985) 156 ITR 422 (Bom); *Gupta Brick Works v Commercial Taxes Tribunal, Bihar*, (1985) Tax LR 2934 (Pat); *CST v Triloki Nath & Sons*, (1984) 57 STC 322 (All).".

Page 411: section 10(1):

At the end of the paragraph titled "*Partial integration of net agricultural income with non-agricultural income for rate purposes—intra vires*", *add*,—
"Also see, *K. V. Abdulla v ITO*, (1986) 161 ITR 589 (Karn).".

Page 416: section 10(3):

In line 4 from top, after "631 (All)", *add*,— "; *CIT v Dr. Chinna Oomen*, (1984) 150 ITR 583 (Mad)" [on the subject "*Casual or non-recurring—meaning of*"].

Page 417: section 10(3):

At the end of the paragraph titled "*Windfall*", *add*,— "The decision in *Mehboob's case* [(1977) 106 ITR 758 (Bom)] has been dissented from in *CIT v Sahney Steel & Press Works Ltd.* [(1985) 152 ITR 39, 57 (AP)].

In the facts of *CIT v Stewarts & Lloyds of India Ltd.* [(1987) 165 ITR 416 (Cal)], the payment received by the assessee from the foreign company was held to be a casual receipt in the nature of a windfall as the payment was not attributable to any legal obligation or custom or past practice or tradition.

In the facts of *Princess Maheshwari Devi of Pratapgarh v CIT* [(1984) 147 ITR 258 (Bom)], the payments by way of monthly alimony received by the wife were held not to be windfalls or casual payments."

Page 419: section 10(3):

After line 2 from top, *add*,—

"In the context of claiming exemption under section 10(3), not only

questions of fact but also questions of law may arise [see, *CIT v Smt. Kamla Devi Khajanchi*, (1986) 157 ITR 367 (Raj)].”.

Page 419: section 10(3):

Before line 12 from bottom, *add*,—

“Where the assessee claimed exemption on the ground that a particular income was from horse-racing but could not prove the fact by producing evidence in that behalf, exemption was not granted [see, *V. P. Samtani v CIT*, (1981) 132 ITR 488 (Cal)].”.

Page 420: section 10(3):

At the end of the page, *add*,—

“In *CIT v Beldih Club* [(1986) 161 ITR 861 (Pat)], a donation of Rs. 50,000 was given to the assessee club by TISCO for major repairs and renovation of its building, etc. It was held that the donation was a casual receipt in the hands of the club of a non-recurring nature.”.

Page 423: section 10(3):

Lines 4 and 3 from the bottom: The decision in *CIT v Dr. K. George Thomas* [(1974) 97 ITR 111 (Ker)] has been affirmed in *Dr. K. George Thomas v CIT* [(1985) 156 ITR 412 (SC)] and the decision in *CIT v Dr. K. George Thomas* [(1977) 108 ITR 1024 (Ker)] has been affirmed in *Dr. K. George Thomas v CIT* [(1986) 159 ITR 851 (SC)].

Page 428: section 10(3):

Before line 17 from bottom, *add*,—

- “14. *CIT v Sarbamangala Devi*, (1987) 163 ITR 898 (Pat).
15. *CIT v P. R. Chakarvarty*, (1987) 165 ITR 345 (Pat).
16. *CIT v Smt. Sarbamangala Devi*, (1987) 165 ITR 346 (Pat).
17. *CIT v J. C. Wahal*, (1987) 34 Taxman 326 (All).
18. *CIT v Moti Chand Khajanchi*, (1987) 34 Taxman 498 (Raj) [cases holding the receipt, on facts, to be casual and non-recurring].”.

Page 429: section 10(3):

After serial No. 34, *add*,—

- “35. *CIT v Dr. Chinna Oomen*, (1984) 150 ITR 583 (Mad).
36. *Ganesh Flour Mills Co. Ltd. v CIT*, (1985) 156 ITR 179 (Del)
37. *Hindustan Trading Corpn. v CIT*, (1986) 160 ITR 15 (Guj).
38. *N. A. Mody v CIT*, (1986) 162 ITR 420 (Bom).
39. *K. Ramaswami Gounder v CIT*, (1987) 163 ITR 94 (Mad) [cases holding the receipt, on facts, not to enjoy the exemption].”.

Page 430: section 10(3):

Lines 12-13 of paragraph titled “*Changes made*”: The Supreme Court has granted a special leave petition [see, (1985) 142 ITR (St.) 1] against the decision in *CIT v G. R. Karthikeyan* [(1980) 124 ITR 85 (Mad)].

Page 430: section 10(3):

Lines 18-19 from top: After "20 CTR (Karn) 16, 18", *add*,— " ; *M. A. A. Raoof v ITO*, (1985) 152 ITR 228 (Mad)" [holding that the jackpot winnings would be includible in income by virtue of section 2(24)(ix) subject to exemption under section 10(3)].".

Page 430: section 10(3):

Lines 13 and 12 from bottom: After "(1981) 20 CTR (Karn) 16, 18", *add*,— " ; *CIT v B. C. Kothari*, (1986) 160 ITR 27 (Mad)" [discussing the effect of section 59 of the Finance Act, 1972].

The above state of law remained in operation for assessment years 1973-74 to 1986-87.

The Finance Act, 1986, has amended section 10(3) and has omitted section 80TT with effect from 1st April, 1987, *i.e.*, for and from assessment year 1987-88. The new position is:

Any receipts which are of a casual and non-recurring nature to the extent such receipts do not exceed Rs. 5,000 in the aggregate shall be exempt under section 10(3). It may be noted that for assessment years 1973-74 to 1986-87, such limit was Rs. 1,000 excluding the winnings from lotteries which enjoyed exemption under section 80TT in case of non-corporate taxpayers. Thus, in the hands of corporate taxpayers, the winnings from lottery were includible in their total income. For and from assessment year 1987-88, income by way of winnings from lotteries, both in the hands of corporate and the non-corporate taxpayers, enjoys exemption under section 10(3) itself to the extent provided therein. The taxable portion of winnings from lotteries is to be taxed at a flat rate of 40 per cent. as provided in the newly inserted section 115BB."

Page 432: section 10(4A):

Before the paragraph titled "*Travel concession to employees—section 10(5)*" *add*,—

"The Finance Act, 1982 (14 of 1982), has substituted a new clause (4A) of section 10 for the then existing clause (4A) with effect from 1st April, 1982. For the effect of the so-substituted clause (4A), see pages xvii-xviii of Vol. 4.

In the facts of *Dhirajlal Haridas v CIT* [(1984) 138 ITR 570 (Bom)], the assessee was held entitled to the exemption under section 10(4A) for the assessment year 1965-66."

Page 432: new section 10(4B):

Section 10(4B) has been inserted by the Finance Act, 1982 (14 of 1982), with effect from 1st April, 1983. For the effect of the newly-inserted section 10(4B), see pages xix-xx of Vol. 4.

Page 432: section 10(4A):

Footnote marked * : The Non-Resident (External) Account Rules, 1970, has subsequently been amended by the Non-Resident (External) Accounts (Amendment) Rules, 1985 [Notification No. GSR 254, dated 21-2-1985: (1985) 153 ITR (St.) 20].

Page 434: section 10(5):

After line 5 from top, *add*,—

“The following departmental circular is also relevant to section 10(5):—

‘Clarification regarding exemption of value of leave travel concession under section 10(5) of the Income-tax Act, 1961.—Section 10(5) of the Income-tax Act, 1961, provides for grant of exemption from income-tax to the value of leave travel concession granted by an employer to an employee. In regard to assessment for assessment years 1971-72 and onwards, this concession is dealt with in section 10(5) (ii) which spells out two situations. The first is where an employee receives travel concession or assistance from his employer for himself and his family in connection with his proceeding on leave to any place in India. The second is where an employee receives travel concession or assistance from his employer or former employer for himself and his family in connection with his proceeding to any place in India after retirement from service or after the termination of his service. A proviso to this sub-clause spells out that the amount exempted under either of these situations shall not, except in the case of circumstances prescribed by rule 2B of the Income-tax Rules, 1962, exceed the value of the travel concession or assistance which would have been received by or due to the individual in connection with his proceeding to his home district in India on leave or, as the case may be, after retirement from service or on the termination of his service. Under rule 2B, the following cases are specified as being exceptions to the ceiling laid down in afore-mentioned proviso:

- (a) where the individual is entitled to such travel concession or assistance once in a block of four calendar years commencing from the calendar year 1974, the value of such travel concession or assistance availed of in each such block;*
- (b) where the individual is entitled to such travel concession or assistance more than once in any such block of four calendar years, the value of the travel concession or assistance first availed of by him in each such block;*
- (c) where such travel concession or assistance is not availed of by the individual during any such block of four calendar years, the value of the travel concession or assistance, if any, first availed of by the individual during the first calendar year of the immediately succeeding block of four calendar years.*

2. It has been represented that Income-tax Officers are interpreting section 10(5) read with rule 2B to allow exemption in respect of leave travel concession for visiting any place in India other than the home town once in a block of four years and if more than one leave travel concession

is allowed to an employee in this block, no exemption under section 10(5) in respect of the second concession is allowed. The Board have examined the matter. Under section 10(5) read with rule 2B, the value of leave travel concession is exempt completely in a block of four years. However, if the employee is entitled to more than one leave travel concession in a block of four years, then full exemption is to be given for the first concession under rule 2B and subsequent concession in the same block is limited to an amount that would have been admissible had the employee visited his home town. It is only the excess of the concession over the fare to the home town that has to be treated as perquisite and taxed as part of salary income in respect of the second leave travel concession for going to any place in India in the same block of four years.' [Circular No. 413, dated 4th March, 1985.]"

Page 434: new section 10(5A):

Section 10(5A) has been newly inserted by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with retrospective effect from 1st April, 1982. For the effect of the newly-inserted section 10(5A), see page xx of Vol. 4.

Page 434: section 10(6)(i):

After line 20 from top, *add*,—

"In *CIT v G. B. Shuttelworth* [(1986) 161 ITR 486 (Ker)], the passage money paid to the assessee by the employer for the trip of assessee's son from India to U. K. has been held to be passage money received by the assessee for his child in connection with his proceeding on home-leave within the meaning of section 10(6)(i) and exempt as such."

Page 437: section 10(6)(vii):

In line 16 from top, after "108 ITR 493, 499 (Bom)].", *add*,— "Section 10(6)(vii)(a)(ii) refers to the employment of the foreign technician generally and nowhere it has been laid down that an employment within the meaning of that section would be confined to only one employment under one employer [*CIT v J. Gestin*, (1986) 161 ITR 563 (Cal)].".

Page 437: section 10(6)(vii):

After line 23 from top, *add*,—

"In the facts of *Addl. CIT v William Land* [(1982) 31 CTR (Del) 310], it has been held that the assessee was a foreign technician and was entitled to exemption under section 10(6)(vii)."

Page 438: section 10(6)(vii-a):

Before line 3 from bottom, *add*,—

"Rule 16A of the Income-tax Rules, 1962, specifies the prescribed authority for approving any institution or body established for scientific research for the purposes of section 10(6)(vii-a). The said rule 16A has been reproduced at page 5474 of Vol. 6.

Page 440: new section 10(6A):

Section 10(6A) has been newly inserted by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984. For the effect of the newly-inserted section 10(6A), see page xxi of Vol. 4.

Page 440: section 10(8):

Before line 14 from bottom, *add*,—

“Remuneration received by an individual under any technical co-operation assistance programme—section 10(8).—In the facts of *CIT v Prem Bandhu Gupta* [(1985) 156 ITR 737 (Del)], the salary received by the assessee, who was an Indian national, under the Technical Cooperation Assistance Programme and Project from the Agency for International Development, U.S.A., was held eligible for the benefit of exemption under section 10(8).”.

Page 441: section 10(10):

Before line 5 from bottom, *add*,—

“Section 10(10) has also been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1982. For the effect of such amendments, see pages xxii-xxiii of Vol. 4. Annotation portion under section 10(10) should be read subject to such amendments.”.

Page 442: section 10(10):

After line 6 from top, *add*,—

“Gratuity received by an employee as per the terms of the employment agreement is eligible for exemption under section 10(10) subject to the provisions of that section even though he had been re-employed by the same employer for another term by a fresh agreement which also provides for payment of gratuity [*CIT v Smt. Savitaben N Amin*, (1986) 157 ITR 135 (Guj)].”.

Page 442: section 10(10):

It may be noted that the provisions of the Payment of Gratuity Act, 1972, have undergone vital amendments by the Payment of Gratuity (Amendment) Act, 1984 (25 of 1984) [AIR 1984 Acts 157-158]; by the Payment of Gratuity (Second Amendment) Act, 1984 (Act 26 of 1984) [AIR 1984 Acts 159-160] and by the Payment of Gratuity (Amendment) Act, 1987 (Act 22 of 1987). The annotation in that regard has to be read subject to such amendments.

In *Jecwanlal (1929) Ltd. v Appellate Authority under the Payment of Gratuity Act* [AIR 1984 SC 1842], their Lordships have relied on the decision in *Shri Digvijay Woollen Mills Ltd. v Mahendra Prataprai Buch* [(1980) 4 Taxman 15 (SC) = AIR 1980 SC 1944] and have held that for the purposes of computation of “fifteen days wages” of a monthly-rated employee under section 4(2) of the Payment of Gratuity Act, 1972, the monthly wages last drawn by him should be treated as wages for 26 working days

and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30.

Page 446: section 10(10AA):

Before the paragraph titled "*Retrenchment compensation—section 10(10B)*", *add,—*

"Encashment of leave salary—section 10(10AA).—Section 10(10AA) has been newly inserted by the Finance Act, 1982, with retrospective effect from 1st April, 1978, *i.e.*, for and from assessment year 1978-79 and the same has undergone amendments with retrospective effect from 1st April, 1978, by the Taxation Laws (Amendment) Act, 1984. For the effect of section 10(10AA), see pages xxiv-xxv of Vol 4.

It may also be noted that under section 17(1)(*va*), newly inserted by the Taxation Laws (Amendment) Act, 1984, with retrospective effect from 1st April, 1978, any payment received by an employee in respect of any period of leave not availed of by him, has specifically been included within the definition of 'salary', for and from assessment year 1978-79.

Prior to insertion of section 17(1)(*va*), the proceeds from encashment of leave salary have been held to fall within the meaning of the expression 'profits in lieu of salary' in section 17(3)(*ii*) and thus taxable [*Patil Vijaykumar v Union of India*, (1985) 151 ITR 48 (Karn)].

For and from assessment year 1978-79, such proceeds have statutorily been made exempt subject to section 10(10AA). The exemption under that section has been provided for only if such proceeds are received at the time of retirement, whether on superannuation or otherwise.

The benefit under section 10(10AA) has been held to be available even in case of voluntary retirement on resignation [*CIT v R. J. Shahney*, (1986) 159 ITR 160 (Mad)].".

Page 446: section 10(10B):

After the paragraph titled "*Retrenchment compensation—section 10(10B)*", *add,—*

"The provisions of the so-inserted section 10(10B) have been discussed by the Supreme Court in *Mahindra Singh Dhantwal v Hindustan Motors Ltd.* [(1985) 152 ITR 68 (SC)].

It may be noted that section 10(10B) has undergone amendments by the Finance Act, 1985, with effect from 1st April, 1986.

The scope and effect of the so-amended section 10(10B) have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of the provisions relating to retrenchment compensation received by a workman.—8.1 Under the existing provisions, retrenchment compensation received by a workman is exempt from income-tax subject to certain limits. The maximum amount of retrenchment compensation exempt

is the sum calculated on the basis provided in section 25F(b) of the Industrial Disputes Act, or Rs. 20,000, whichever is less.

8.2 The Finance Act, 1985, has raised the aforesaid monetary limit of Rs. 20,000 to Rs. 50,000. The Finance Act, 1985, has also provided that the aforesaid limit shall not apply in cases where the compensation is paid under any scheme which is approved in this behalf by the Central Government, having regard to the need for extending special protection to the workmen in the undertaking to which the scheme applies and other relevant circumstances.

8.3 The amendments take effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'."

Page 446: new section 10(10C):

Exemption in respect of compensation received by public sector employees on voluntary retirement—section 10(10C).—Section 10(10C), newly inserted by the Finance Act, 1987, with effect from 1st April, 1987, provides exemption in respect of any payment received by an employee of a public sector company [as defined in the newly inserted section 2(36A)] at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of such company and other relevant circumstances, approved in this behalf. This new provision is operative for and from assessment year 1987-88.

The scope and effect of the newly inserted section 10(10C) have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Exemption of compensation received by employees of public sector companies on voluntary retirement.—15.1 At present, under section 10(10B), any compensation received by a workman at the time of his retirement is exempted upto the amount calculated in accordance with section 25F of the Industrial Disputes Act or Rs. 50,000, whichever is less. The limit is, however, not applicable in respect of compensation received under certain schemes approved by the Central Government.

15.2 A number of Public Sector Undertakings have formulated voluntary retirement schemes for their employees. With a view to extend relief to such employees, the Finance Act, 1987, by introducing a new clause (10C) in section 10, provides exemption in respect of any payment received by them at the time of their voluntary retirement in accordance with any scheme which the Central Government may approve having regard to the economic viability of the Public Sector Company and other relevant circumstances. This exemption will be available to any employee whether a workman or an executive.

15.3 This amendment shall come into force with effect from 1st April, 1987, and will, accordingly, apply to assessment year 1987-88 and subsequent years.'.

Pages 447-448: section 10(11):

The Public Provident Fund Scheme, 1968, has since been amended by the Public Provident Fund (Amendment) Scheme 1983 [Notification No. GSR 271(E), dated 16-3-1983: (1983) 141 ITR (St.) 70]; by the Public Provident Fund (Amendment) Scheme, 1984 [Notification No. GSR 54(E), dated 7-2-1984: (1984) 146 ITR (St.) 214]; by the Public Provident Fund (Amendment) Scheme, 1985 [Notification No. GSR 598(E), dated 22-7-1985: (1985) 155 ITR (St.) 70]; by the Public Provident Fund (Amendment) Scheme, 1986 [Notification No. GSR 895(E), dated 23-6-1986: (1986) 160 ITR (St.) 61] and by the Public Provident Fund (Second Amendment) Scheme, 1986 [Notification No. GSR 1013(E), dated 20-8-1986: (1986) 162 ITR (St.) 2].

Pages 449-50: section 10(13A):

At the end of line 5 from top, *add*,— “The above view of the Punjab High Court has actually been dissented from in *All India Lakshmi Commercial Bank Officers' Union v Union of India* [(1984) 150 ITR 1 (Del)]; *Patil Vijaykumar v Union of India* [(1985) 151 ITR 48 (Karn)]; *M. Krishna Murthy v CIT* [(1985) 152 ITR 163 (AP)] holding that an assessee, who is actually residing in his own residential house or flat, cannot claim exclusion under section 10(13A) in respect of house rent allowance received by him from his employer.

Ultimately, the Punjab view has been statutorily superseded by insertion, with retrospective effect from 1st April, 1976, of the *Explanation* to section 10(13A) by the Taxation Laws (Amendment) Act, 1984 (67 of 1984).

Further, the ceiling of Rs. 400 per month in section 10(13A) has been deleted by the Finance Act, 1986, with effect from 1st April, 1987.

Rule 2A, as amended with effect from 1st April, 1987, has been reproduced at pages 5428-5430 of Vol. 6.”.

Page 454: section 10(14):

After line 21 from top, *add*,—

“In *Zdzizlaw Shakuz v CIT* [(1986) 158 ITR 420 (AP)], it has been held that the outstation allowance and hotel charges were merely allowances granted to the assessee to meet his personal expenses at the place where the duties of his office were ordinarily performed by him and therefore these were not exempt under section 10(14).”.

Page 454: section 10(15):

Section 10(15) has been amended by—

- the Finance Act, 1982 (14 of 1982)†;
- the Finance Act, 1983 (11 of 1983)†;
- the Finance Act, 1985 (32 of 1985); and
- the Finance Act, 1987 (11 of 1987).

For the effect of the amendments made by Acts marked†, see pages xxvi-xxix of Vol. 4.

The scope and effect of the amendment made by the Finance Act, 1985, have been elaborated in the following portion of departmental circular No. 421, dated 12th June, 1985, as under:

'Exemption from income-tax in respect of interest payable to foreign banks performing central banking functions.—9.1 The Finance Act, 1985, has inserted a new sub-clause (iiia) in clause (15) of section 10 of the Income-tax Act with a view to providing exemption from income-tax in respect of interest payable to any foreign bank performing central banking functions. This exemption will be available only where the interest is payable in respect of the deposits made by such bank with any scheduled bank in India with the approval of the Reserve Bank of India.

9.2 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'

The amendments of section 10(15)(ii) by the Finance Act, 1987, secure the substitution of the Post Office Cumulative Time Deposit Rules, 1981, and the Post Office Savings Account Rules, 1981, for the references to the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959, and the Post Office Savings Account Rules, 1965. These amendments have been made effective retrospectively for and from assessment year 1983-84. *

Further, the newly inserted section 10(15)(iv)(h) by the Finance Act, 1987, secures that interest payable by public sector companies on certain specified bonds and debentures will not form part of an assessee's total income subject to such conditions, including the condition that the holder of such bonds or debentures registers his name and holding with that company, as may be specified by the Central Government by notification in the Official Gazette. This new item is operative for and from assessment year 1987-88.

The scope and effect of the amendments made in section 10(15) by the Finance Act, 1987, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Modification in the nomenclature for exemption of Income-tax on certain deposits with Post Office.—16.1 Section 10(15) of the Income-tax Act exempts within the permissible limits interest earned by assesseees on certain deposits made with the Post Office Saving Banks. The exemption covers interest earned on deposits made in the—

- (i) Post Office Savings Banks under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959; and
- (ii) Public Account under the Post Office (Savings Banks) Rules, 1965.

16.2 The rules regarding the above two Post Office Savings Accounts have been revised and as a consequence have been substituted by the Post

Office (Cumulative Time Deposits) Rules, 1981, and the Post Office Savings Account Rules, 1981, respectively. The substitution has been made with effect from 1st April, 1982.

16.3 Section 10(15) as a consequence has been amended with retrospective effect. It now refers to the rules currently applicable for the rules which are now not legally in force. The interest on deposits made in the Post Office Savings Bank under these rules continue to qualify for exemption from income-tax.

16.4 The amendment is with the retrospective effect from 1st April, 1983, and will, accordingly, apply to assessment year 1983-84 and subsequent years. Interest which may have accrued after 1st April, 1982, on the deposits made under the revised rules would, therefore, be eligible for exemption.

Exemption of interest on bonds issued by certain public sector undertakings.—17.1 In his Budget speech for the year 1986-87, the Finance Minister had announced that “the Government will introduce another series of Public Sector Bonds with a tax-free return”. Pursuant to this announcement, certain Public Sector Enterprises such as Mahanagar Telephone Nigam Limited, National Thermal Power Corporation, Indian Railway Finance Corporation had issued these tax-free bonds.

17.2 By insertion of item (h) in sub-clause (iv) of clause (15) of section 10, the Finance Act, 1987, provides that interest payable by the Public Sector Companies on certain specified bonds and debentures† will not form part of total income, subject to the conditions which the Central Government may specify by notification, including the condition that the holder of such bonds or debentures registers his name and holding with that company.

17.3 The amendment shall come into force with effect from 1st April, 1987, and will, accordingly, apply to assessment year 1987-88 and subsequent years.’

The annotation portion under section 10(15) should be read subject to such amendments.

Page 455: section 10(15)(iv)(c):

In line, 14-15 from top, after “102 ITR 196, 200-1 (Ker)”, add,—
“ ; *Renusagar Power Co. Ltd. v Union of India*. (1982) 137 ITR 97 (Del)”.

† Certain such specified bonds and debentures are:

- (1) 10 per cent. Secured Redeemable NTPC Bonds 1986—First Series issued by the NTPC, New Delhi [Notification No. 7439, dated 23-7-1987].
- (2) 10 per cent. Secured Redeemable Non-convertible Bonds issued by the Mahanagar Telephone Nigam Ltd., New Delhi [Notification No. 7518, dated 11-9-1987].
- (3) 10 per cent. Secured Redeemable Non-convertible Bonds of Rs. 1,000 each issued by the Indian Railway Finance Corporation Ltd. [Notification No. 7520, dated 11-9-1987].

Page 462: section 10(15)(ii):

After line 24 from top, *add*,—

“The following departmental circular is also relevant to section 10(15)(ii):—

‘Interest earned from Cumulative Time-Deposit—Exemption from income-tax—Clarification regarding—Section 10(15)(ii) of the Income-tax Act, 1961.—Section 10(15)(ii) of the Income-tax Act, 1961, provides for exemption from tax in respect of interest on various specified securities, interest on deposits in Post Office Savings Banks and bonus in respect of deposits under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959.

2. The Board have considered a reference on the eligibility of interest received under Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959. Since the Post Office Savings (Cumulative Time Deposits) Rules, 1959, is only one kind of account under the Post Office Savings Accounts, such interest in respect of Post Office Savings Bank (Cumulative Time Deposits) Account is also exempt under section 10(15)(ii) of the Income-tax Act, 1961, to the extent to which the deposit does not exceed the maximum amount to be deposited or invested therein (in accordance with the regulations of the postal Bank).’ [Circular No. 410, dated 12th February, 1985.]”.

Page 462: section 10(16):

In line 3 of the paragraph titled “*Scholarship granted to meet the cost of education—section 10(16)*”, *add*,—“If the whole object of payments in that regard is to meet the cost of education, the fact that the recipient does not spend the whole of the amount or saves something out of it or utilises it for other purposes would not detract from the character of the payments being one for scholarship [CIT v V. K. Balachandran, (1984) 147 ITR 4, 7 (Mad)].

In CIT v M. N. Nadkarni [(1986) 161 ITR 544 (Bom)], the scholarship was payable at the sole discretion of the employer to the children of the employees as such. It was held that such scholarship could not be treated as a perquisite in the hands of the employee as no right was created in favour of the employee. Even assuming such payments to be perquisites in the hands of the employee, the same were exempt under section 10(16).”.

Page 465: section 10(17):

At the end of the paragraph titled “*Member’s Daily Allowance—section 10(17)*”, *add*,—

“Section 10(17) was amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with retrospective effect from 1st April, 1986. That section 10(17) has again been amended by the Finance Act, 1987 (11 of 1987), with retrospective effect from 1st April, 1986. Under the amended section 10(17), the exemption, for and from assessment year 1986-87 is in respect of any income by way of—

- (i) daily allowance received by Members of Parliament and Members of any State Legislature or Committee thereof;
- (ii) any allowance received by a member of Parliament under the Members of Parliament (Constituency Allowance) Rules, 1986 [which, at present, is Rs. 250 per month];
- (iii) all other allowances not exceeding Rs. 600 per month in the aggregate received by Members of any State Legislature or any Committee thereof, which the Central Government may, by notification in the Official Gazette, specify in this behalf."

Page 465: section 10(17A):

After paragraph titled "*Literary or scientific awards, etc.—section 10(17A)*", *add*,—

"The following departmental circular makes clarification regarding taxability of awards for sportsmen:—

'Taxability of awards for sportsmen—Clarification regarding.—The Central Board of Direct Taxes had occasion to consider the question whether the award received by a sportsman, who is not a professional, will be taxable in his hands or not. In the case of a sportsman who is a professional, the award received by him will be in the nature of a benefit in exercise of his profession and, therefore, will be liable to tax under the provisions of the Income-tax Act. However, in the case of a non-professional, the award received by him will be in the nature of a gift and/or personal testimonial. In view of this, it is clarified that such awards in the cases of a sportsman, who is not a professional, will not be liable to tax in his hands as it would not be in the nature of income. The question whether a sportsman is a professional or not will depend upon the facts and circumstances of each case to be decided by the assessing officer.

2. In cases where such receipt is in the nature of gift, the chargeability to gift-tax will be considered separately.' [Circular No. 447, dated January 22, 1986.]".

Page 466: sections 10(18A) and (19A):

In line 17 from top, after "Taxation 62(3)-49 (MP)", *add*,— "*= (1981) 132 ITR 412 (MP); Smt. Maharani Ushadevi v CIT, (1981) 131 ITR 445 (MP); H. H. Raja Ajit Singh of Jhabua v CIT, (1983) 140 ITR 138 (MP); CIT v Princess Usha Trust, (1985) 156 ITR 650 (MP); CIT v Raja Vikramaditya Singh, (1987) Tax LR 811 (MP); Raja Vikramaditya Singh v CIT, (1987) 64 CTR (MP) 28*".

In *Maharaval Lakshmansingh v CIT* [(1986) 160 ITR 103 (Raj)], a portion of the official palace was rented out to tenants. It was held that the annual value of such rented out portion is not exempt under section 10(19A). However, the Madhya Pradesh High Court had taken a view that even in such a case, the exemption is available to the entire palace [*CIT v Bharat-chandra Banjdeo, (1985) 154 ITR 236 (MP)*].

The maintenance allowance received by the wife of the Ruler out of Privy Purse is not income assessable in the hands of the wife [*S. S. Laxmibai-saheb v CIT*, (1984) 150 ITR 289 (Bom)]. Also see, *Arvind Singh v CIT*, (1986) 160 ITR 908 (Raj) (amount received by the mother)].

Page 466: section 10(20):

At the end of the page, *add*,— “Similarly, an agricultural market committee has been held to be a local authority [*CIT v Agricultural Market Committee*, (1983) 143 ITR 1020 (AP), special leave petition granted by the Supreme Court: (1983) 141 ITR (St.) 42; *Budha Veerinaidu v State of Andhra Pradesh*, (1983) 143 ITR 1021 (AP); *Krishi Utpanna Bazar Samity v ITO*, (1986) 158 ITR 742 (Bom)].

In *Nagpur Municipal Corporation v CIT* [SLP (Civil) No. 4260-4261 of 1987: (1987) 167 ITR (St.) 2 (SC)], their Lordships of the Supreme Court have granted, by an order dated 27-7-1987, a special leave to the assessee, a municipal corporation, to appeal against the judgment dated 22-1-1987 of the Bombay High Court in ITR Nos. 390 of 1975 and 471 of 1976, whereby the High Court, on a reference, answered against the assessee the question whether the assessee's income derived from the supply of water (under the directions of the State Government) to an area outside jurisdictional limits (for an assessment period before the amendment to section 10(20) of the Income-tax Act, 1961, with effect from 1-4-1972) was exempt either under section 10(20) or under section 10(20A).”.

Pages 467-468: section 10(20A):

After line 4 from top of page 468, *add*,—

“In *Gujarat Industrial Development Corpn. v CIT* [(1985) 151 ITR 255 (Guj)], it was held that the assessee-corporation was neither a State entitled to exemption under Article 289(1) nor an authority entitled to exemption under section 10(20A).

Also see, *Karnataka Industrial Areas Development Board v CIT*, (1987) 168 ITR 96 (Karn).”.

Page 468: section 10(21):

After the paragraphs titled “*Scientific Research Associations—section 10(21)*”, *add*,—

“Section 10(21) has been amended by the Finance Act, 1983, with effect from 1st April, 1984. For the effect of the amendment, see pages xxx-xxxi of Vol. 4.

The following departmental circular is relevant to section 10(21):—

Exemption under section 10(21) of the Income-tax Act, 1961.—Section 10(21) of the Income-tax Act, 1961, provides for grant of exemption to the income of a scientific research association approved for the time being for the purposes of section 35(1)(ii) of the Act which is applied solely to the purposes of that association.

The question whether the income of the scientific research association has to be spent in the relevant year itself so as to qualify for the exemption came up before the Orissa High Court in the case of *Dalmia Institute of Scientific and Industrial Research v ITO* [(1979) 118 ITR 575]. The High Court has held that there is nothing in section 10(21) which requires that to qualify for exemption the income should be spent in the relevant year itself. The interpretation of section 10(21) given by the Orissa High Court has been accepted by the Board.

Section 10(21) has been amended by the Finance Act, 1983, so as to require the scientific research association—

- (i) to invest or deposit after February 28, 1983, any sums by way of contributions in the forms and modes specified in section 11(5);
- (ii) to conform to the investment pattern prescribed by section 11(5) after November 30, 1983, in respect of any funds invested or deposited before March 1, 1983, in any other manner;
- (iii) not to have investments in any company other than Government company as defined in section 617 of the Companies Act, 1956, or a Corporation established by or under a Central, State or Provincial Act after November 30, 1983.

In order to ensure that scientific research associations approved for the time being under section 35(1)(ii) also satisfy the requirements of section 10(21) as amended, it will be necessary that notices under section 139(2) of the Income-tax Act, 1961, are issued to the associations and the returns scrutinised for fulfilment of the conditions prescribed in section 10(21) in case returns are not filed voluntarily under section 139(1). [Circular No. 400, dated 19th October, 1984.]”

Page 468: section 10(22):

At the end of paragraph titled “*Educational institutions—section 10(22)*”, add,—

“In the context of exemption under section 10(22), the condition about spending and accumulation provided for in section 11 are not relevant [*CIT v Rao Bahadur Calavala Cunnan Chetty Charities*, (1982) 135 ITR 485 (Mad); *CIT v Saraswath Poor Students Fund*, (1984) 150 ITR 142 (Karn)].

In the facts of the following cases, the provisions of section 10(22) were held attracted:—

1. *Birla Vidhya Vihar Trust v CIT*, (1982) 136 ITR 445 (Cal).
2. *CIT v Sindhu Vidya Mandal Trust*, (1983) 142 ITR 633 (Guj).
3. *CIT v Academy General Education*, (1984) 150 ITR 135 (Karn).
4. *CIT v Bimetal Bearings Ltd.*, (1985) 152 ITR 85 (Mad).
5. *CIT v Doon Foundation*, (1985) 154 ITR 208 (Cal).

Also see, *CIT v Devi Educational Institution*, (1985) 153 ITR 571 (Mad).

On the other hand, in the facts of the following cases, it was held that the exemption under section 10(22) was not attracted:—

1. *CIT v Saraswath Poor Students Fund*, (1984) 150 ITR 142 (Karn).
2. *CIT v Maharaja Sawai Mansingh Ji Museum Trust*, (1987) 33 Taxman 279 (Raj).".

Page 468: section 10(22A):

At the end of page, *add*,—

"An institution with facilities for diagnosis and treatment of patients cannot be denied the benefit of section 10(22A) solely on the ground that there is no facility for treating in-patients [*Mangilal Gotawat Charitable Trust v CIT*, (1984) 150 ITR 682 (Karn)].".

Page 469: section 10(23):

After the paragraph titled "*Sports associations, etc.—s. 10(23)*", *add*,—

"Section 10(23) and section 11 are not mutually exclusive.—Section 10(23) exempts income of certain specified sports associations, if such associations are specified by the Central Government for the purposes of exemption under that section. Thus, the power under section 10(23) is one of discretion given to the Government. That does not mean that if such an association establishes that the games or sports under its control, supervision, etc., are of general public utility, it cannot, as of right, seek exemption under section 11(1)(a). In this view of the matter, it may be concluded that the doctrine of mutuality is inapplicable [*CIT v Andhra Pradesh Riding Club*, (1987) 168 ITR 393, 403 (AP)].

Departmental circular No. 398, dated 17th October, 1984, is relevant to section 10(23), which is as under:—

'Sports associations and institutions approved under section 10(23) of the Income-tax Act, 1961—Clarification regarding.—'Section 10(23) of the Income-tax Act, 1961, provides for the grant of exemption from tax to any income of an association or institution established in India having as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may specify in this behalf from time to time by notification in the Official Gazette.

The exemption is subject to the fulfilment of three conditions as under:

- (i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established;
- (ii) no part of the income of the association or institution is distributed in any manner to its members except as grants to any association or institution affiliated to it; and
- (iii) the association or institution is, for the time being, approved for the purpose of this clause by the Central Government by general or special order.

The updated list of the games and sports notified under section 10(23) is enclosed.

The three conditions enumerated in the preceding paragraph are cumulative. Therefore, approval of the association or institution by the Central Government will amount to fulfilment of only one of the three conditions. The first two conditions will also have to be satisfied in order that the approved association or institution is eligible for exemption from tax under section 10(23) of the Act. This requirement will have to be satisfied by filing copies of audited accounts before the Income-tax Officer.' [Circular No. 398, dated 17th October, 1984.]".

Page 470: section 10(23A):

At the end of the page, *add*,—

"In case of charitable institution falling also under section 10(23A), if a portion of their income is not amenable to section 10(23A) because of the limitations of that section, the assessee may claim benefit of section 11 in respect to that portion [see, *Bar Council of Uttar Pradesh v CIT*, (1983) 143 ITR 584 (All)].".

Page 473: section 10(24):

At the end of the paragraph titled "*Certain incomes of registered trade unions—section 10(24)*", *add*,—

"In the facts of *Indian Sugar Mills Association v CIT* [(1984) 150 ITR 593 (Cal)], it was found that the association was one of employers only, set up, *inter alia*, for the protection of the interest of its members. It was held that the assessee-association was not entitled to exemption under section 10(24).".

Page 474: section 10(26A):

Section 10(26A) has been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1983. For the effect of such amendment, see page xxxi of Vol. 4. Section 10(26A) has again been amended by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1985. For the scope and effect of the 1985-amendment, the following portion of the departmental circular No. 421, dated 12th June, 1985, is relevant:—

'Exemption in respect of residents of Ladakh.—10.1 Under an existing provision, income accruing or arising to persons who were residents of the district of Ladakh in the accounting year relevant to the assessment year 1962-63 is exempt from income-tax up to the assessment year 1985-86, if such income is derived from any source in the district of Ladakh or outside India.

10.2 The Finance Act, 1985, has extended this exemption for a further period of three years, that is, for the assessment years 1986-87 to 1988-89.'.

The annotation portion under section 10(26A) should be read subject to such amendments.".

Page 475: section 10(26A):

At the end of footnote marked†, *add*,— “The Finance Act, 1983, had, again, extended the period of exemption for another three years, namely, the assessment years 1983-84 to 1985-86. Then, the Finance Act, 1985, has further extended the exemption period by another three years upto 1988-89.”.

Page 476: section 10(27):

At the end of paragraph titled “*Income from live-stock breeding, etc.—section 10(27)*”, *add*,—

“The then section 10(27) excluded in express terms only ‘any income derived from a business of live-stock breeding or poultry or dairy farming’. It did not exclude the business of live-stock breeding or poultry or dairy farming from the operation of the Act. In that view of the matter, the losses suffered by an assessee on account of breeding of horses and pigs were held admissible for deduction in computing the total income [*Royal Calcutta Turf Club v CIT*, (1983) 144 ITR 709 (Cal)].

It may be noted that section 80JJ has also been omitted by the Finance Act, 1985, with effect from 1st April, 1986.

Exclusion in respect of a tax credit certificate—section 10(28).—In *International Instruments Pr. Ltd. v CIT* [(1982) 133 ITR 283 (Karn)], it has been held that the exclusionary provisions of section 10(28) have been inserted only by way of abundant caution, as, even without such a provision, the amount of tax credit certificate cannot be treated as income liable to tax under the Income-tax Act.”.

Page 477: section 10(29):

In line 10 from top, after “124 ITR 282 (Guj)”, *add*,— “or the Central Warehousing Corporation [*CIT v Central Warehousing Corpn.*, (1985) 156 ITR 407 (Del)]”.

Page 477: section 10(29):

Before the paragraph titled “*Subsidy from the Tea Board—section 10(30)*”, *add*,—

“For claiming exemption under section 10(29), it must be proved that the income derived by an authority constituted for the marketing of commodities is income which is derived from letting of godowns or warehouses for the purposes specified in that section, which are storage, processing or facilitating the marketing of commodities. If the letting of godowns or warehouses is for any other purpose, or if income is derived from any other source, such income is not exempt under that section. Therefore, the income derived by such an authority from handling of goods or from bank by way of interest is not covered by section 10(29) [*M. P. State Warehousing Corpn. v CIT*, (1982) 133 ITR 158 (MP); *M. P. State Warehousing Corpn. v CIT*, (1984) 145 ITR 420 (MP)].

In the facts of *West Bengal State Warehousing Corporation v CIT* [(1986) 157 ITR 149 (Cal)], the income of the assessee from warehousing was held eligible for the benefit under the then section 83, which was the predecessor of section 10(29), the latter being operative for and from assessment year 1968-69. Such benefit was not claimed in the original assessment proceedings. It was subsequently claimed by resorting to rectification application under section 154. It was held that the Income-tax Officer had no jurisdiction to assess such income and therefore there was a glaring and obvious error which should be rectified.

In *Addl. CIT v Rajasthan State Warehousing Corporation* [(1987) 167 ITR 694 (Raj)], the income from letting of godowns and/or warehouses of the Corporation was held eligible for exemption under section 10(29).".

Page 478: section 10(30):

After line 4 from top, *add*,—

"Section 10(30) has been amended by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985. For the effect of such amendment, see page xxxii of Vol. 4."

Page 478: section 10:

Before line 7 from bottom, *add*,—

"State Government undertakings incorporated under the Companies Act, 1956 [*Andhra Pradesh State Civil Supplies Corporation Ltd. v CIT*, (1984) 148 ITR 497 (AP), special leave petition granted by the Supreme Court: (1986) 162 ITR (St.) 60] or the Gujarat Industrial Development Corpn. [*Gujarat Industrial Development Corpn. v CIT*, (1985) 151 ITR 255 (Guj)] is not a "State" and is not entitled to the exemption under Article 289(1) of the Constitution."

Page 479: section 10:

At the end of line 12 from top, *add*,— "The said section 30(2) of Act 47 of 1961 has been amended by section 55 of the Finance Act, 1982, so as to extend the period of exemption from tax in case of Deposit Insurance Corporation from 'four accounting years following' to 'eight accounting years following'."

Page 480: section 10:

Before section 10A, *add*,—

"The decision in *Ramaiah's* case [(1980) 126 ITR 638 (Karn)] has been followed in *CIT v Dr. P. L. Narula* [(1984) 150 ITR 21 (Del)]. Also see, *CIT v A. R. Khanna*, (1987) 60 CTR (Del) 48.

In *CIT v Smt. Dipali Goswami* [(1985) 156 ITR 36 (Cal)], it has been held that the pension received by the widow of the deceased employee of the United Nations was exempt from tax.

XII. *Bank of Bhutan.*—By section 57 of the Finance Act, 1982, the Bank of Bhutan constituted under the Royal Charter of the Bank of Bhutan, 1968, has been exempted from liability to pay any income-tax on the interest accruing during the period commencing on the 1st day of January, 1972, and ending with the 31st day of December, 1986, on the deposits made by that bank with the State Bank of India.

XIII. *Banking Service Commission.*—By section 27 of the Banking Service Commission Act, 1984 (44 of 1984), it has been provided that the Commission shall not be liable to pay any tax or surtax in respect of—

- (a) any income, profits or gains accruing or arising out of the Fund of the Commission or any amount received in that Fund; and
- (b) any income, profits or gains derived, or any amount received, by the Commission.

XIV. *Housing and Urban Development Corporation Ltd.*—By section 42 of the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), the Housing and Urban Development Corporation Ltd. has been exempted from liability to pay—

- (a) any income-tax on its income for the previous years relevant to the assessment years from 1986-87 to 1990-91; and
- (b) any surtax on chargeable profits for the previous years relevant to assessment years 1986-87 and 1987-88.”.

Pages 480-483: section 10A:

I. The text of section 10A has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986).

The scope and effect of the amendments made by Act 46 of 1986 in section 10A have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under—

‘(ii) *Liberalisation of the special provisions in respect of newly established industrial undertakings in free trade zones.*—5.1 Section 10A of the Income-tax Act provides for a complete tax exemption in respect of the profits and gains derived from an industrial undertaking set up in any free trade zone for a period of five initial assessment years. The tax exemption is granted with reference to the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce any article or thing and each of the four immediately succeeding assessment years.

5.2 As pointed out by various trade associations, such undertakings in the free trade zones do not always earn profit during all the five initial years. In such cases, they cannot avail of the full tax benefit. In order to get over the problem, the exemption for five assessment years has been permitted to be availed of within a longer time framed as per the Amending Act by providing in sub-section (3) that a taxpayer would be entitled to avail of

the exemption, at his option, in respect of any five consecutive assessment years falling within a period of eight years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. The proviso to this new subsection stipulates that in no case shall the tax holiday extend beyond this period of eight years. Further, as per the *Explanation* at the end of this section, the expression "relevant assessment years" has been defined to mean the five or less consecutive assessment years, specified by the assessee at his option, within the period of eight years, commencing from the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. Thus, in a case where the assessee exercises his option in the third assessment year relevant to the previous year counted from the year in which the industrial undertaking begins to manufacture or produce articles or things, the exemption can be availed of up to the seventh assessment year. In the case where the option in this behalf is exercised by the assessee in the sixth year, the exemption can be claimed up to the eighth year only.

5.3 The aforesaid provision takes effect from 1st April, 1987, and will, accordingly, apply in relation to the assessment year 1987-88 and subsequent years."

II. Section 10A has further been amended by the Finance Act, 1987 (11 of 1987), with retrospective effect from 1st April, 1981, by inserting a new clause (iii) in the *Explanation* to that section. That new clause (iii) coins a definition, for the purposes of that section 10A, of the expression 'manufacture' so as to include any—

- (a) process, or
- (b) assembling, or
- (c) recording of programmes on any disc, tape, perforated media or other information storage device.

The scope and effect of the above amendment have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under—

*'Clarificatory amendment to extend tax holiday to the units in free trade zones.—*19.1 Section 10A of the Income-tax Act provides a tax holiday to newly established industrial undertakings in free trade zones. The tax exemption is available for five consecutive assessment years out of the block of initial eight years. The section refers to units engaged in "manufacture or production of articles or things". There are several cases of units, set up in the free trade zones, which only assemble or process imported components for export, the benefit to the country being the value added. As an incentive for earning foreign exchange, section 10A has been amended with retrospective effect from 1-4-1981 when it was first introduced, to clarify that units that merely assemble or process goods for export would also get the benefit of the tax holiday. The amendment also covers units which carry out recording of programmes on any disc, tape,

perforated media or other information storage device. In this regard, the Board had already issued instruction in November, 1986.

19.2 The amendment will come into force retrospectively from 1st April, 1981, and will, accordingly, apply in relation to assessment year 1981-82 and subsequent years.’

The annotations to that section should be read subject to such amendments.

Also, the amendment of section 10A(4)(ii) by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, is consequential to the substitution, by that Act, of a new section 74 in place of the existing section 74.”.

Pages 487-500: sections 11 to 13:

The texts of sections 11 to 13 have undergone many amendments. Further, section 2(15) has undergone amendment of a vital nature. The annotations to those sections should be read subject to those amendments.

Page 503: section 11:

Before the paragraph titled “*Who may be a beneficiary*”, add,—

“**Who may create a trust.**—According to section 7 of the Indian Trusts Act, 1882, a trust may be created by any person who is competent to contract. It may also be created by or on behalf of a minor with the permission of a principal civil court of original jurisdiction. In the facts of *CIT v S. Kumaraswamy Reddiar Trust* [(1982) 138 ITR 808 (Ker)], it was found that the trust was treated by the four major partners of a firm and the minor admitted to the benefits of the partnership did not create, or contribute, to the trust or to its initial corpus. It was held that the validity of the trust could not be assailed on the ground that no permission of the civil court was obtained for creating the trust. Also see, *Parthas Trust v CIT*, (1987) Tax LR 1259 (Ker).

However, where the minors-beneficiaries under a trust were found also to be contributories to the trust fund, it was held that the minors were beneficiaries as well as authors of the trust. As such trust was created without obtaining the prior approval of the civil court as required by that section 7, the trust was not a valid one [*CIT v T. A. V. Trust*, (1987) 166 ITR 848 (Ker)].”.

Page 503: section 11:

At the end of line 7 from the bottom, add,— “A valid trust may be created in favour of an unborn person provided it satisfies the condition laid down in section 13 of the Transfer of Property Act, 1882, even though the coming into existence of such a beneficiary is uncertain [*CIT v P. Bhandari*, (1984) 147 ITR 500, 505 (Mad)].”.

Page 510: section 11:

In line 13 from the bottom, after “86 ITR 317 (All)”, add,— “; *Indian Glass Agency v CIT*, (1982) 137 ITR 245 (Del)”.

Page 511: section 11:

In lines 6 and 5 from bottom, after “28 ITR 110 (All)].”, *add*,— “Nor does a validly created trust become invalidated merely because a few more beneficiary were added by the trustees subsequent to the demise of the settlor [*CIT v Trustees of H.E.H. The Nizam’s Dependants and Khanazads Trust*, (1983) 139 ITR 517 (AP)].”.

At the end of the page, *add*,—

“In the facts of *CIT v Ghanshyamdas Binani* [(1983) 141 ITR 482 (Cal)], the trust was held to have been validly created. Also see, *CIT v Gangadhar Sikaria*, (1982) 31 CTR (Gauh) 140.

Trust for the benefit of would-be wife.—In *CIT v P. Bhandari* [(1984) 147 ITR 500 (Mad)], a trust was created for the benefit of the prospective wife of the first minor son. If the said first minor son did not marry, then the benefit was to go to the prospective wife of the second minor son and if the second son also did not marry, the benefit was to go to charitable purposes. Department’s attack on the validity of the trust was negatived. It was held that the trust did not offend the rule against perpetuity, nor could it be held to be invalid on the ground of uncertainty or vagueness as regards the object and also as regards beneficiaries.”.

Page 513: section 11:

At the end of line 8 from bottom, *add*,— “On the other hand, according to the Madras High Court, the court under section 92 of the Civil Procedure Code can give a direction which is necessary for the administration of any trust, but it cannot in exercise of that power alter the objects of the Trust. Even assuming that the court has the necessary power to alter the objects of the trust, it cannot do so with retrospective effect from the date of the original trust. The alteration can be effective from the date of the decree [*Sakthi Charities v CIT*, (1984) 149 ITR 624 (Mad), special leave petition granted by the Supreme Court: (1985) 151 ITR (St.) 14].

In *Yogiraj Charity Trust v CIT* [(1984) 149 ITR 7 (Del)], the Tribunal, on the material before it, held that because of the presence there of an offending clause, the trust was not entitled to exemption under section 11. Thereafter, the offending clause was removed by the court in a civil suit for rectification of the trust deed. In the reference before the High Court the assessee sought to rely on the rectified deed and claimed exemption on the basis thereof. It was held that the rectified deed was not in existence when the Tribunal decided the matter. The subsequent event, though relevant, could not be looked into at the reference stage.

In *Laxminarain Lath Trust v CIT* [(1987) 33 Taxman 194 (Raj)], the supplementary deed was taken into consideration and it was held that the assessee-trust has acquired the status of a trust wholly for charitable and religious purposes eligible for exemption under section 11.”.

Page 514: section 11:

At the end of paragraph titled "*Revocation of a trust, whether possible*", add,— "*Also see, CWT v Sardar Surjit Singh, (1982) 138 ITR 186 (Cal)*

Extinguishment of a trust.—According to section 77 of the Indian Trusts Act, a trust is extinguished—(a) when its purpose is completely fulfilled; or (b) when its purpose becomes unlawful; or (c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or (d) when the trust being revocable is expressly revoked. The expression 'otherwise' in section 77(c) would cover a case where the trust property is not available for fulfilment of its purpose because all the beneficiaries under the trust have validly transferred their interest [*Princess Usha Trust v CIT, (1983) 144 ITR 808, 816 (MP)*]."

Page 516: section 11:

In line 3 from bottom, after "*AIR 1959 SC 1002*", add,— " ; *CIT v Girdharram Hariram Bhagat, (1985) 154 ITR 10, 37-41 (Guj)*" [on the point of distinction between a public and a private endowment].

Page 517: section 11:

At the end of the first paragraph titled "*Endowments, how created*", add,— "This is so because section 5 of the Indian Trusts Act, 1882, under which writing is necessary for the creation of a trust in relation to an immovable property, does not apply to charitable endowment [*CWT v Sardar Surjit Singh, (1982) 138 ITR 186, 191 (Cal)*]."

Page 518: section 11:

After line 9 from top, add,—

"In the facts of *CIT v Ramchandraji Maharaj Ka Bada Mandir* [(1984) 146 ITR 442 (MP)], the dedication was held to be absolute and irrevocable and therefore the endowment was held to be valid.

However, in the facts of *Gauri Shankarji Deity v Union of India* [(1984) 145 ITR 67 (MP)], it was held that the alleged gift to the deity was a mere scheme for making the property inalienable and there had been no genuine divestiture in favour of the deity and the endowment was sham."

Page 521: section 11:

After serial No. (4), add,—

"(5) A trust was created for a temple built for the benefit of the trustees and the members of the family of the creator of the trust. The trust deed provided that the provisions of the Public Trusts Act will not have application. It was also provided that the members of the family will have right of residence and meals in the temple. Held, the trust was not a public charitable trust [*Shri Gopal Lalji Ka Mandir Trust v CIT, (1984) 146 ITR 513 (MP)*]."

Page 523: section 11:

In the last line of footnote No. 1, after "AIR 1972 SC 2069, 2076", add,— " ; *State of Orissa v Titaghur Paper Mills Co. Ltd.*, AIR 1985 SC 1293, 1345; *A. Sreenivasa Pai v Saraswathi Ammal*, AIR 1985 SC 1359, 1362; *CIT v Mahendra Moha Sewa Nidhi*, (1985) 152 ITR 516, 519 (Punj); *Neroth Oil Mills Co. Ltd. v CIT*, (1987) 166 ITR 418, 427 (Ker)" [holding that a document must be construed as a whole].

Page 525: section 11:

After line 14 from top, add,—

"Ordinarily, documents executed by an Indian in his own language, particularly without any professional aid, are expressed in loose and inaccurate language and sometimes a more extended or restricted meaning may have to be given to particular words than what their exact literal meaning permits, provided always that the context justifies it [*CIT v Official Trustee of West Bengal*, (1983) 139 ITR 1, 7 (Cal)].

The language used in a trust deed should be interpreted in accordance with reason and commonsense. It must receive a construction according to the plain meaning of the words and sentences therein contained. Where the author of a trust is an Indian, the words used in the trust deed must be construed bearing in mind the way of life and thinking of ordinary Indians [*CIT v Upper Ganges Sugar Mills Ltd.*, (1985) 154 ITR 308, 315, 317 (Cal)].".

Page 530: section 11/2(15):

At the end of line 3 from the bottom, add,— "That state of law remained operative under the 1961 Act for assessment years 1962-63 to 1983-84, both inclusive. It may be noted that the words 'not involving the carrying on of any activity for profit' have been omitted from section 2(15) by the Finance Act, 1983, with effect from 1st April, 1984."

Pages 531, 532, 534, 543: section 11:

The decision in *CIT v Ahmedabad Rana Caste Association* [(1973) 88 ITR 354 (Guj)] has been affirmed by the Supreme Court in *CIT v Ahmedabad Rana Caste Association* [(1983) 140 ITR 1 (SC)].

Page 533: section 11:

In lines 4-5 from top, after "69 ITR 750 (All)", add,— " ; *Mullick Somnath Charitable Trust v CIT*, (1986) 160 ITR 3 (Cal)".

Page 533: section 11:

Before line 3 from bottom, add,—

"The promotion of search for truth and diffusion of useful knowledge, promotion of conferences and discussions, the foundation and maintenance of conference centres and reading rooms and publication of journals and books for general use among the members and others are objects directly

relating to education [*Ecumenical Christian Centre v CIT*, (1983) 139 ITR 226 (Karn)]. Similarly, extending financial assistance to students for their educational purposes would squarely and fairly fall within the connotation 'education' [*CIT v Saraswath Poor Students Fund*, (1984) 150 ITR 142, 147 (Karn)]. At the same time, visiting a museum in one way is education in the great school of life, but that is not the sense in which the word 'education' is used in section 2(15) [*CIT v Maharaja Sawai Man-singh Ji Museum Trust*, (1987) 33 Taxman 279, 281 (Raj)].".

Page 536: section 11:

In line 8 from top, for "but, of the", read "but, if the".

Page 536: section 11:

In line 14 from bottom, for "(1977) 110 ITR 725 (Guj)", read "(1977) 106 ITR 725 (Guj)".

This case has been distinguished, on facts, in *CIT v Western India Chamber of Commerce Ltd.* [(1982) 136 ITR 67 (Bom)].

Before line 13 from bottom, *add*,—

"Where a charitable trust is established for the benefit of members of the police and their families, the beneficiaries of such trust would constitute a section of the public [*CIT v Andhra Pradesh Police Welfare Society*, (1984) 148 ITR 287 (AP)].".

Page 537: section 11:

In line 8 from top, after "(1981) Tax LR 724, 727 (Del)]", *add*,—"However, according to the Bombay High Court in *CIT v Western India Chamber of Commerce Ltd.* [(1982) 136 ITR 67 (Bom)], an organisation which provides for the distribution of its property amongst its members on a winding up is not for that reason an organisation formed for the private gain of its members."

Page 538: section 11:

At the end of line 2 from top, *add*,—"However, the grant of licence under section 25 of the Companies Act is a relevant circumstance to be taken into consideration in deciding whether the objects of the company were of a charitable nature [*Ecumenical Christian Centre v CIT*, (1983) 139 ITR 226, 230 (Karn)].".

Page 540: section 11:

Serial No. (20): The decision of the Andhra Pradesh High Court [100 ITR 392] has been affirmed by the Supreme Court in *CIT v Andhra Pradesh State Road Transport Corporation* [(1986) 159 ITR 1 (SC)].

Page 540: section 11:

At the end of serial No. (24), *add*,—"Also see, *Bar Council of Uttar Pradesh v CIT*, (1983) 143 ITR 584 (All)".

Page 541: section 11:

After serial No. (26) [giving illustrations of cases holding to constitute charitable purposes], *add*,—

“(27) Dissemination of knowledge to the people and the raising of moral, intellectual, economic, social and political conditions in general [*Ganga Prasad Varma Memorial Society v CIT*, (1982) 134 ITR 421 (All)].

(28) Advancement of trade [*CIT v Western India Chamber of Commerce Ltd.*, (1982) 136 ITR 67 (Bom)].

(29) Construction of hall, establishment of library, reading room, etc. [*Mahakoshal Shaheed Smarak Trust v CIT*, (1983) 140 ITR 795 (MP)].

(30) Construction and maintenance of *Dharamshala* for the use of the travelling public [*CIT v Ganesh Ram Laxminarayan Goel*, (1984) 147 ITR 468 (MP). Also see, *CIT v Estate of B. P. Kayan Trust*, (1985) 155 ITR 60 (Cal); *Raghunath Das Parihar Dharamshala v CIT*, (1986) 158 ITR 432 (Raj)].

(31) Protection, promotion and advancement of agricultural producers in India and to improve the lot of the farming community; to undertake and support campaigns for working towards freedom from hunger [*CIT v World Agriculture Fair Memorial Farmers' Welfare Trust Society*, (1985) 155 ITR 370 (Del)].

(32) Establishment and maintenance of institutions for educational advancement and physical, material and spiritual well-being of backward people [*CIT v Sree Narayana Trust*, (1985) 155 ITR 389 (Ker)].

(33) To promote commerce, art, science or any other useful objects connected with photographic and allied trades, etc. [*CIT v South Indian Photographic & Allied Trades Association*, (1987) 166 ITR 166 (Mad). Also see, *Hosiery Industry Federation v CIT*, (1983) 140 ITR 983 (Punj)].

(34) Promotion and sale of *Khadi* [*CIT v Adarsh Gram Trust*, (1986) 159 ITR 41 (Raj); *Addl. CIT v Adarsh Gram Trust*, (1985) 21 Taxman 20 (Raj); *CIT v Adarsh Gram Trust*, (1987) Taxation 84(3)-137 (Raj)].

(35) Promotion and popularisation of equestrian games and imparting training in the art of horsemanship [*CIT v Andhra Pradesh Riding Club*, (1987) 168 ITR 393, 400 (AP)].

(36) To promote, encourage and protect the interests of the persons engaged in banking and pawn-brokers' trade [*CIT v A. P. Bankers & Pawn Brokers Association*, (1987) Taxation 87(3)-1 (AP)].”.

Page 542: section 11:

At the end of serial No. (8), *add*,— “Also see, *CIT v All India Hindu Mahasabha*, (1983) 140 ITR 748 (Del); *Addl. CIT v All India Hindu Mahasabha*, (1984) 41 CTR (Del) 353.”.

In the last line of serial No. (12), after “106 ITR 725, 740 (Guj)”, *add*,— “; *Indian Sugar Mills Association v CIT*, (1984) 150 ITR 593 (Cal)”..

After serial No. (13) [giving illustrations of cases holding not to constitute charitable purposes], *add*,—

“(14) Social and cultural purposes [*Addl. CIT v Gangabai Charities*, (1983) 142 ITR 718 (Mad), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 2]. With respects, the matter requires re-consideration.

(15) Promotion of welfare of employees of a company [*Sakthi Charities v CIT*, (1984) 149 ITR 624 (Mad)].

(16) Scientific breeding of horses for the purposes of a race club [*Hyderabad Race Club v CIT*, (1985) 153 ITR 521 (AP—FB), approving, *CWT v Hyderabad Race Club*, (1978) 115 ITR 453 (AP)].

Also see, *CIT v Workshop Trust*, (1983) 142 ITR 26 (Mad); *Municipal Corporation of Hyderabad v Hyderabad Race Club*, (1987) 164 ITR 222 (SC).”.

Page 543: section 11:

Before the central heading “*Exemption and taxability*”, add,—

“*Promotion of sports—whether a charitable purpose—clarification regarding.*—“The expression “charitable purpose” is defined in section 2(15) of the Income-tax Act, 1961, to include relief of the poor, education, medical relief and the advancement of any other object of general public utility.

The question whether promotion of sports and games can be considered as being a charitable purpose has been examined. The Board are advised that the advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individuals would be an object of general public utility. In view thereof, promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15) of the Income-tax Act, 1961. Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 11 of the Income-tax Act, 1961, even if it is not approved under section 10(23) of the Act relating to exemption from tax of sports associations and institutions having their objects as the promotion, control, regulation and encouragement of specified sports and games.’ [*Circular No. 395, dated 24th September, 1984.*].”.

Page 548: section 11:

At the end of the page, add,—

“Section 11 has been amended by the Finance Act, 1983 (11 of 1983) and by the Finance Act, 1984 (21 of 1984). For the effect of such amendments, see pages xxxii to xxxviii of Vol. 4.

The annotation portion under section 11, wherever necessary, should be read subject to such amendments.”.

Page 557: section 11:

At the end of the paragraphs titled “*Scope of the exemption*”, add,—

“In the facts of *Addl. CIT v Hamdard Dawakhana (Wakf)* [(1986) 157 ITR 639 (Del)], it has been held that the provisions of sections 61 to 63

relating to revocable transfers did not apply because there was no power in the wakf deed to withdraw the business from the trust.”.

Page 558: section 11:

In line 8 from top, after “114 ITR 463, 467 (SC)”, *add*,— “; *Hosiery Industry Federation v CIT*, (1983) 140 ITR 983 (Punj)” [holding that property held under trust includes a business undertaking so held].

Page 563: section 11:

At the end of line 10 from top, *add*,— “Thus, there can be a public-cum-private trust also [*State of Tamil Nadu v Moopanar Family Charitable Trust*, (1986) 57 CTR (Mad) 145, 149].”.

Page 563: section 11:

In lines 6 and 5 from bottom, after “90 ITR 203, 208 (Del—FB)”, *add*,— “; *Addl. CIT v Hamdard Dawakhana (Wakf)*, (1986) 157 ITR 639 (Del)”.

Page 565: section 11:

Before line 5 from bottom, *add*,—

“In that view of the matter, the income from the properties of the trust has been held to be arrived at in the normal commercial manner without classification under the various heads set out in section 14 [*CIT v Rao Bahadur Calavala Cunnan Chetty Charities*, (1982) 135 ITR 485 (Mad); *CIT v Estate of V. L. Ethiraj*, (1982) 136 ITR 12 (Mad)].”.

Page 566: section 11:

Before ‘*Illustrations*’ under paragraph titled “*Accumulated—meaning of*”, *add*,—

“Where any excess of income over expenditure in a particular year is carried forward to the next year, it must be regarded as ‘accumulation of income’ [*CIT v Estate of B. P. Kayan Trust*, (1985) 155 ITR 60 (Cal)].”.

Page 566: section 11(1)(a):

After the paragraph titled “*Basis for 25% accumulation*”, *add*,—

“From a perusal of section 11(1)(a), it is clear that the reference in that section is to ‘income’ and not to ‘total income’ as defined in section 2(45) [*Parsi Zoroastrian Anjuman Trust v CIT*, (1987) 163 ITR 832 (MP)]. In that case, the income of the trust was Rs. 73,484.06. The Tribunal took the view that a sum of Rs. 17,414, being rental income and forming part of the aggregate income, was not available for ascertaining the permissible limit of 25 per cent. of accumulation. It was held that the Tribunal was not justified in taking that view. The accumulation was to be ascertained with reference to Rs. 73,484.06.”.

Page 566: section 11:

In line 8 from bottom, after “127 ITR 378 (AP)”, add,— “ ; *CIT v Rao Bahadur Calavala Cunnan Chetty Charities*, (1982) 135 ITR 485 (Mad); *CIT v Ganga Charity Trust Fund*, (1986) 162 ITR 612 (Guj)”.

Before line 7 from bottom, add,—

“Thus, where depreciation has been debited in the accounts of the trust, the same has to be deducted in computing the income of the trust [*CIT v Society of the Sisters of St. Anne*, (1984) 146 ITR 28 (Karn)].

The amount of tax deducted at source out of the income of the trust cannot be treated as real income in the context of ‘accumulation’ or ‘application’ [*CIT v Jayashree Charity Trust*, (1986) 159 ITR 280 (Cal)].

But, where there is no legally enforceable demand is outstanding in respect of any tax or duty payable and no payment in respect thereof is in fact made, the income continues to be factually available for application [*CIT v State Bank of India*, (1987) 32 Taxman 619, 630 (Bom)].”.

Page 566: section 11:

In line 3 from bottom, for “irretrievable”, read “irretrievably”.

Page 567: section 11:

At the end of line 19 from top, add,— “But in *CIT v Ramchandra Poddar Charitable Trust* [(1987) 164 ITR 666 (Cal)], the trust donated shares, which were purchased in an earlier year out of accumulated profits. It was held that such donation, not related to the income of the current year could not amount to ‘application’ of income for the purposes of section 11.”.

Page 568: section 11:

After line 16 from top, add,—

“The departmental circular No. 100, dated 24th January, 1973, has been employed in the facts of *CIT v Cutchi Memon Union* [(1985) 155 ITR 51 (Karn)].

Payment of taxes—held ‘application’.—Expenditure by way of payment of tax out of current year’s income has to be considered as ‘application’ for charitable purposes because the payment has been made to preserve the corpus, the existence whereof is essential for the trust itself [*CIT v Janaki Ammal Ayya Nadar Trust*, (1985) 153 ITR 159 (Mad). Also see, *CIT v Ganga Charity Trust Fund*, (1986) 162 ITR 612 (Guj)].

Other cases of ‘application’.—Other cases holding that in the facts of those cases, the expenditure or outgoing did constitute ‘application’ of income for charitable purposes, are:—

(1) *CIT v Trustees of the Jodi Trust*, (1982) 133 ITR 494 (Bom) [donation to another charitable trust having similar objects].

(2) *CIT v Kannika Parameswari Devasthanam & Charities*, (1982) 133 ITR 779 (Mad) [capital expenditure incurred on improving or maintaining property of the trust].

However, in the facts of the following cases, the expenditure or outgoing was held not to constitute 'application of income':—

(1) *CIT v S. RM. CT. M. Thiruppani Trust*, (1982) 134 ITR 555 (Mad), special leave petition granted by the Supreme Court: (1984) 147 ITR (St.) 3 [accepting immovable property in satisfaction of outstanding amounts—held no application of income but mere change of investment].

Composite fund, application out of.—In *CIT v Ashoka Charity Trust* [(1982) 135 ITR 556 (Cal)], there existed a composite fund consisting of income from property held under a charitable trust and non-includible voluntary contributions for the assessment year 1972-73. Out of such fund, the expenditure/application to charitable purposes exceeded the first part of the composite fund. The Income-tax Officer apportioned such expenditure/application between the first and the second part of the fund on *pro rata* basis and on that basis held a portion to be not exempt under section 11. It was held that there was no justification for apportionment. Further, as the expenditure/application had exceeded the income of the trust, there remained nothing to be taxed.

Also see, *CIT v Jayashree Charity Trust* [(1986) 159 ITR 280 (Cal)], where it was held that the assessee had sufficient funds in its hands apart from the dividend income to meet the expenditure that qualified for exemption under section 11. Therefore, no portion of dividend income could be said to have enjoyed exemption under that section.

Excess expenditure in an earlier year may be set off against next year's income.—In *CIT v Maharana of Mewar Charitable Foundation* [(1987) 164 ITR 439 (Raj)], the trust had spent in excess of its income for the current year resulting in a deficit which was carried forward to the next year. It was held that in considering the 'application' of income for the next year, the carried forward deficit was first to be set off against the income of the subsequent year.”.

Page 569: section 11:

In line 5 from top, after “127 ITR 620 (Del)”, add,— “; *CIT v Mahendra Moha Sewa Nidi*, (1985) 152 ITR 516 (Punj); *CIT v Andhra Pradesh State Road Transport Corpn.*, (1986) 159 ITR 1 (SC); *CIT v Adarsh Gram Trust*, (1986) 159 ITR 41 (Raj); *CIT v Sangit Kala Mandir Trust*, (1987) 166 ITR 217 (Cal)” [holding that primary or dominant object is the real pointer].

Page 570: section 11:

Before line 4 from bottom, add,—

“The Supreme Court decision in *Trustees of Charity Fund v CIT* [(1959) 36 ITR 513 (SC)] has been distinguished in *Mullick Somnath Charitable Trust v CIT* [(1986) 160 ITR 3, 11 (Cal)] on the ground that whereas in the Supreme Court case the trustees were directed to give preference to

the poor and indigent relations, in the Calcutta case the trustees could spend the entire income of the trust for the support and maintenance of the relations of the settlor who were poor and indigent without exercising any preference.”.

Page 571: section 11:

In line 17 from the bottom, after “81 ITR 557 (All)”, add,— “ ; *Mullick Somnath Charitable Trust v CIT*, (1986) 160 ITR 3 (Cal); *Sakthi Charities v CIT*, (1984) 149 ITR 624 (Mad); *CIT v Shri Agastyar Trust*, (1984) 149 ITR 609 (Mad); *CIT v All India Hindu Mahasabha*, (1983) 140 ITR 748 (Del)” [on the point of taxability of trusts for mixed purposes].

Pages 573-578: section 11/2(15):

It may be noted that the discussion under the paragraphs titled “*Not involving the carrying on of any activity for profit*” is relevant for assessment years 1962-63 to 1983-84 only. These restrictive words were omitted from section 2(15) by the Finance Act, 1983, with effect from 1st April, 1984. For the effect of such omission, reference may be made to page xii of Vol. 4.

Page 577: section 11/2(15):

Lines 29-30 from top: The decision of the *Andhra Pradesh High Court* [100 ITR 392 (AP)] has been affirmed by the Supreme Court in *CIT v Andhra Pradesh State Road Transport Corporation* [(1986) 159 ITR 1 (SC)].

Page 578: section 11/2(15):

After serial No. 12, add,—

“13. *CIT v Indian and Eastern Newspaper Society*, (1982) 136 ITR 81 (Del).

14. *Mahakoshal Shaheed Smarak Trust v CIT*, (1983) 140 ITR 795 (MP), holding that since the dominant object of the trust was not to earn profit but to carry out the object of public utility, the profits earned in the shape of rental from buildings, etc., did not form an ‘activity for profit’. Also see, *Ganga Prasad Varma Memorial Society v CIT*, (1982) 134 ITR 421 (All); *CIT v Arya Vysya Kalyana Nilaya Sangam*, (1986) 159 ITR 324 (AP).

15. *Hosiery Industry Federation v CIT*, (1983) 140 ITR 983 (Punj).

16. *CIT v Ganesh Ram Laxminarayan Goel*, (1984) 147 ITR 468 (MP).

17. *Bar Council of Rajasthan v CIT*, (1984) 147 ITR 720 (Raj).

18. *Addl. CIT v Hamdard Dawakhana (Wakf)*, (1986) 157 ITR 639 (Del).

19. *Addl. CIT v Rajasthan Charity Trust*, (1987) 165 ITR 759 (Raj), holding that the hedging transactions were not made by the trustees with the object to earn profit.

20. *CIT v Sangit Kala Mandir Trust*, (1987) 166 ITR 217 (Cal).

21. *CIT v Trustees of Anupam Charitable Trust*, (1987) 167 ITR 129 (Raj).

22. *CIT v Andhra Pradesh Riding Club*, (1987) 168 ITR 393, 404-12 (AP).".

Page 579: section 11/2(15):

In line 25 from top, after "23 CTR (Mad) 155", *add,— " ; CIT v Beharilal Jhunhunwala Charitable Trust*, (1984) 147 ITR 521 (Bom); *CIT v Urmilla Bansi Dhar Foundation Trust*, (1986) 159 ITR 100 (Del); *CIT v Ashoka Charities*, (1987) 163 ITR 579 (Mad)" [on the point, where the business itself was held under trust].

Page 589: section 11(1A):

Before line 9 from bottom, *add,—*

"Section 11(1A), by a deeming fiction, provides that where a capital asset held under a trust for charitable or religious purpose is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, it shall be deemed that the capital gain (whole or part, as the case may be) arising from the transfer has been applied to a charitable or religious purpose.

In *CIT v Avkash Nidhi* [(1986) 160 ITR 729 (Guj)], one L donated 60 shares in company K to the assessee-trust, the value of such shares being Rs. 1,35,180. The shares were then subject to a pledge for Rs. 80,500. The trust had already had certain shares in company C which it sold for Rs. 80,990. Out of such sale proceeds, a sum of Rs. 80,500 was paid to redeem the pledge of the donated shares. The question was whether the utilisation of the sale proceeds with a view to redeem the pledge could be treated as an investment made for the purchase of another capital asset as contemplated by section 11(1A). It was held that by redeeming the pledge, the assessee had merely discharged its obligation to pay the pledgee and has not thereby acquired property, that is, a capital asset.

In *CIT v Trustees of H.E.H. The Nizam's Charitable Trust* [(1981) 131 ITR 497 (AP)], the sale proceeds of certain shares belonging to the trust were invested in the shape of deposits in banks. It was held that the net consideration of the shares had been utilised for acquiring another capital asset within the meaning of section 11(1A).".

Page 590: section 11(2):

In line 4 from bottom, after "129 ITR 191 (Ker)", *add,— " ; CIT v C. M. Kothari Charitable Trust*, (1984) 149 ITR 573 (Mad)".

Page 591: section 11(2):

In the last line of the paragraph titled "*Paragraphs 2 and 4 of Form No. 10 prescribing a time-limit for its filing are ultra vires*", after "98 ITR 387 (J & K)", *add,—* " ; *CIT v S. R. M. C. T. M. Tiruppani Trust*, (1984) 150 ITR 642 (Mad)".

Page 591: section 11(2):

At the end of paragraph titled "*Time-limit for filing Form No. 10*", *add,—*

"In *Harmanjit Trust v CIT* [(1984) 148 ITR 214 (Punj)], the assessee trust applied for extension of time for furnishing the return. There was no response from the Income-tax Officer. The assessee filed return, and also application in Form No. 10, within the time prayed for. It was held that Form No. 10 was not filed out of time prescribed by rule 17."

Page 593: sections 11(3) & (4):

Before line 9 from bottom, *add,—*

"On the point whether, in the circumstances obtained, the case is governed by section 11(3) or section 11(4), see, *CIT v Birla Education Trust*, (1985) 153 ITR 579 (Cal)."

Page 594: sections 11(4A) & (5):

After line 8 from top, *add,—*

"It may be noted that section 11(4A), in relation to the taxability of profits and gains of business, and section 11(5), prescribing the forms and modes of investment of the trust funds, have been newly inserted by the Finance Act, 1983. The scope and effect of these and other related provisions have been explained at pages xxxiv-xxxviii of Vol. 4."

Page 595: section 11:

After line 22 from top, *add,—*

"The question whether a particular expenditure can be considered as an 'application' of the income for charitable purposes has been held to be a question of law fit for reference [*Janki Devi Bajaj Sewa Trust v CIT*, (1985) 154 ITR 445 (Raj)].

Consistency in facts, question about nature not to be reopened.—When a particular charity has been recognised as such for several years and is carrying on the same object and there is no change in the relevant law, it is not for the court to reopen the same point from time to time [*CIT v Shree Ram Memorial Foundation*, (1986) 158 ITR 3 (Del); *Addl. CIT v Hamdard Dawakhana (Wakf)*, (1986) 157 ITR 639, 650 (Del)]."

Page 597: section 12:

After line 5 from top, *add,—*

"In the facts of *CIT v Trustees of Visha Nima Charity Trust* [(1982)]

138 ITR 564 (Bom)], the contributions received by the trust from sale of tickets and advertisement in souvenirs were held to be voluntary contributions within the meaning of the unamended section 12(1). Also see, *CIT v Bengal Mills & Steamer Presbyterian Association*, (1983) 140 ITR 586 (Cal); *Andhra Pradesh Welfare Fund v CIT*, (1983) 143 ITR 82 (AP); *CIT v Sangit Kala Mandir Trust*, (1987) 166 ITR 217 (Cal).

Similarly, the grants-in-aid received from the Government do constitute voluntary contributions [*CIT v Gem & Jewellery Export Promotion Council*, (1983) 143 ITR 579 (Bom)].”.

Page 597: section 12:

After line 20 from top, *add*,—

“However, if in a given case, it is, on facts, found that the income of the donor-trust was being diverted, through the medium of donation to another charitable trust, to non-charitable purposes, the donor-trust cannot be entitled to claim the benefit of section 11 in respect of the amount donated [see, *CIT v Trustees of the Jodi Trust*, (1982) 133 ITR 494, 501 (Bom)].

But where the donation was made under the *bona fide* belief that the donee was a public charitable trust, the donation did enjoy, in the hands of the donor-trust, the benefit of section 11 [*CIT v Hindusthan Charity Trust*, (1983) 139 ITR 913 (Cal)].”.

Page 597: section 12:

In line 15 from bottom, after “128 ITR 456 (Del)”, *add*,— “; *CIT v Shri Billeswara Charitable Trust*, (1984) 145 ITR 29 (Mad); *CIT v Avkash Nidhi*, (1986) 160 ITR 729 (Guj); *CIT v Punyarpan Charitable Trust*, (1987) 166 ITR 214 (Cal); *Trustees of Kilachand Devchand Foundation v CIT*, (1987) 63 CTR (Bom) 104. Also see, *Sukhdeo Charity Estate v CIT*, (1984) 149 ITR 470 (Raj), where the amount received for the specific purpose of implementation of a water supply scheme was held not to constitute income of the donee-trust.”.

Page 602: section 12A(a):

After line 15 from top, *add*,—

“Rule 17A requires filing of ‘the instrument in original’ in case the trust is created under an instrument. When the trust is created otherwise than under an instrument, the requirement is to file ‘the document evidencing the creation of the trust’. In the latter case, the requirement will embrace all evidentials, *i.e.*, all documents which afford a logical basis for inferring the creation of the trust [*Laxminarayan Maharaj v CIT*, (1984) 150 ITR 465 (MP)].”.

Page 602: section 12A(a):

At the end of paragraph titled “*Registration of a trust or institution under*

section 12A(a)—effect of”, add,— “Also see, *Gauri Shankerji Deity v Union of India*, (1984) 145 ITR 67, 81-2 (MP).”.

Page 603: section 12A(b):

After line 18 from top, add,—

“Where the audit report was filed along with a properly filed revised return, there is no contravention of section 12A(b) even though such audit report was not filed along with the original return [*CIT v Sri Baldeoji Maharaj Trust*, (1983) 142 ITR 584 (All)].”.

Page 604: section 13:

After line 5 from top, add,—

“Section 13 has also been amended by the Finance Act, 1982 (14 of 1982); by the Finance Act, 1983 (11 of 1983); by the Taxation Laws (Amendment) Act, 1984 (67 of 1984). For the effect of these amendments see pages xxxix to xlii of Vol. 4.”.

Page 604: section 13(1)(a):

At the end of paragraph titled “*Private religious trusts not enuring for the benefit of the public—section 13(1)(a)*”, add,— “[Cf. *K. Parameswara Ballakuraya v CAGIT*, (1987) 164 ITR 536 (Ker); *M.P. Shanthi Varma Jain v State of Kerala*, (1987) 164 ITR 766 (Ker), special leave petition granted by the Supreme Court: (1986) 161 ITR (St.) 131].”.

Page 605: section 13(1)(b):

After line 2 from top, add,—

“The ban of section 13(1)(b) is not attracted to a charitable trust created before the 1st April, 1962 [*CIT v Shri Maheshwari Agrawal Marwari Panchayat*, (1982) 136 ITR 556 (MP); *CIT v Saraswath Poor Students Fund*, (1984) 150 ITR 142 (Karn); *CIT v Arya Vysya Kalyana Nilaya Sangam*, (1986) 159 ITR 324 (AP)].

However, the ban is attracted if the charitable trust has been created on or after 1st April, 1962 [Cf. *L. Kunhamu Haji v State of Kerala*, (1985) 155 ITR 516 (Ker)].”.

Page 605: section 13(1)(bb):

At the end of paragraph titled “*Ban on carrying on of any business—section 13(1)(bb)*”, add,—

“It may be noted that section 13(1)(bb) has been omitted by the Finance Act, 1983, with effect from 1st April, 1984. The provisions of section 11(4A) are apposite in this regard with effect from that date.”.

Page 607: section 13(1)(c):

Lines 5 and 4 from bottom: “In *CIT v Rattan Trust* [S.L.P. (Civil) Nos. 5092-97 of 1981: (1983) 143 ITR (St.) 66 (SC)], the Supreme Court

has granted special leave petition against the decision in *CIT v Rattan Trust*, (1980) 123 ITR 562 (Punj).”.

At the end of the page, *add*,—

“In *CIT v Govindram Seksariya Charity Trust* [(1987) 166 ITR 580 (MP)], the Commissioner set aside the assessment order in exercise of his power under section 263 on the ground that the Income-tax Officer had allowed exemption under section 11 without examining in detail the applicability of the provisions of section 13(1)(c)(ii). It was held that although the assessment order itself did not disclose the application of mind in that regard by the Income-tax Officer, the entire record showed that the Income-tax Officer was alive to the relevant facts and the provisions of law before proceeding to frame the assessment. Therefore, the Commissioner was not justified in setting aside the assessment.

In spite of the Tribunal's order setting aside the Commissioner's order, the Income-tax Officer proceeded to assess the petitioner afresh and issued draft assessment order in accordance with the provisions of section 144B. The petitioner filed a writ petition challenging the action of the Income-tax Officer. It was held by the High Court that till the order passed by the Tribunal was set aside, the revenue was bound by the order passed by the Tribunal. In that view of the matter, the draft assessment order was quashed [*Govindram Seksaria Charity Trust v ITO*, (1987) 168 ITR 387 (MP)].”.

Pages 608-613: sections 13(1)(d), 13(5) & 13(6):

The following departmental circulars are relevant to section 13(1)(d), section 13(5) and section 13(6) as these stood up to 31st March, 1983:—

1. Section 13(1)(d) of the I.T. Act, 1961, read with section 13(5)—clarification regarding.—‘Under section 13(1)(d) of the I.T. Act, 1961, any charitable or religious trust/institution can claim exemption under section 11 for and from any assessment year relevant to a previous year beginning on or after 1-4-1981† only if the assets of the trust/institution are invested in the manner prescribed in section 13(5)‡.

2. In response to representations made on the subject, the Finance Minister made a statement in Lok Sabha on 31st March, 1981, to the effect that the mode of investment prescribed by section 13(5) is to be modified so as to permit charitable or religious trusts/institutions to invest trust funds in immovable properties as well. An assurance has been given that a suitable amendment* to the Income-tax Act will be sponsored at an early date and that it shall be made effective from 1st April, 1981. Pending the amendment, in consonance with the Government's declared policy, the Commissioners of Income-tax can issue/renew recognition certificates under

† Altered to 1-4-1982 by the Finance Act, 1982.

‡ Section 13(5) has been omitted by the Finance Act, 1983 (w.e.f. 1-4-1983).

* The Finance Act, 1982, has made such amendment.

section 80G if the only reason for consideration in the matter is the holding of assets in the shape of immovable properties, by the applicant trust/institution.

3. This may be brought to the notice of all officers working in your charge.' [Circular No. 317, dated the 19th December, 1981.]

II. Section 13(1)(d)—assessment year 1982-83—previous year beginning prior to 1-4-1981—renewal of recognition certificate under section 80G—clarification regarding.—'Section 13(1)(d) of the Income-tax Act, 1961, provides that subject to the provision of section 13(1)(bb) a trust/institution for charitable or religious purposes will lose the exemption under section 11 for assessment year commencing from assessment year 1982-83 if any funds of the trust or institution are invested or deposited or continue to remain invested or deposited for any period during any previous year commencing on or after 1-4-1981† in any of the forms or modes other than those specified in section 13(5)‡. The Board has received references as to whether in cases where the previous year of the trust/institution is the calendar year 1981, the assessment year for invoking the provision of section 13(1)(d) would be assessment year 1982-83 or 1983-84.

2. The Board desire to point out that if any previous year commences on or after 1-4-1981†, the provision of section 13(1)(d) would be applicable from the very first assessment year relevant to the previous year beginning after 1-4-1981. However, where the previous year commences before 1-4-1981, the provision of section 13(1)(d) will not apply for assessment year 1982-83 and the trust will not lose the exemption under section 11 merely by the application of section 13(1)(d). In such cases, renewal of recognition certificate under section 80G by the Commissioners of Income-tax would be in order. The Commissioner of Income-tax will, however, not be able to renew section 80G certificate where the previous year begins on or after 1-4-1981† and the trust has not complied with the provision of section 13(1)(d). This position will hold good for all previous years starting after 1st April, 1981† irrespective of the assessment year involved.

3. The legal position may please be brought to the notice of all officers working in your charge particularly those assessing the cases of charitable and religious trusts.' [Circular No. 322, dated 16th January, 1982.]

III. Requirements of section 13(1)(d) of the Income-tax Act, 1961; read with section 11(1)(a)—clarification regarding.—'Section 11(1)(a) of the Income-tax Act, 1961, provides for grant of exemption from income-tax to income derived from property held under trust for charitable or religious purposes to the extent the income is applied for such purposes in

† Altered to 1-4-1982 by the Finance Act, 1982.

‡ Section 13(5) has been omitted by the Finance Act, 1983 (w.e.f. 1-4-1983).

India. Where any such income is accumulated or set apart for application to such purposes in India the extent to which the income is permitted to be accumulated or set apart is 25% of the income. Therefore, under section 11(1)(a) income derived from property held under trust enjoys exemption when at least 75% of the income is applied for charitable or religious purposes.

2. Section 13(1)(d) was introduced by the Taxation Laws (Amendment) Act, 1975. It provides for denial of exemption under section 11 for any assessment year commencing from 1982-83[†], if any funds of the trust or institution are invested or deposited or continue to remain invested or deposited for any period during any previous year commencing on or after 1-4-1981 in any form or mode other than those specified in section 13(5). The Finance Bill, 1982, contains a provision to extend this period to one year so that the requirement will be applicable from assessment year 1983-84, for the previous year commencing on or after 1-4-1982.

3. The effect of the insertion of section 13(1)(d) on section 11(1)(a) has been examined. The exemption under section 11(1)(a) will be available only if at least 75% of the income is applied for charitable or religious purposes in India during the year and the remaining amount is invested in the forms or modes specified under section 13(5). Thus, both the requirements will have to be fulfilled before the trust can claim and avail of the exemption under section 11(1)(a). An example to illustrate the position is given below:

A trust derives income from property held for charitable purposes to the extent of Rs. 40,000 in an year. Under section 11(1)(a) it has to spend at least Rs. 30,000 on charitable purpose. The balance of Rs. 10,000 will have to be invested in the forms or modes prescribed under section 13(5). It is only then that the entire income of the trust will get exemption under section 11(1)(a).

4. It may, however, be clarified that in regard to the accumulation of income permitted under section 11(2), the provisions of section 13(6)* make it clear that the requirements of section 13(1)(d)* read with section 13(5)* will not apply. This is because the mode of investing moneys allowed to be accumulated under section 11(2) is specified in that section itself.

5. The contents of this circular may be brought to the notice of all officers working in your charge and in particular to officers assessing trusts. [Circular No. 335, dated April 13, 1982.]

It may be noted that the Finance Act, 1983, has, *inter alia*, substituted section 13(1)(d) and omitted sections 13(5) and 13(6), with effect from 1st April, 1983.

[†] Altered to 1983-84 by the Finance Act, 1982.

* Section 13(1)(d) has been substituted and sections 13(5) and 13(6) have been omitted by the Finance Act, 1983.

It is pertinent to note that the modes and forms of investment by a charitable trust formerly in section 13(5) have now been carried to section 11(5).

Page 614: section 13(2):

At the end of the page, *add*,—

“In order to constitute a loan within the meaning of section 13(2)(a), there must be a positive act of lending coupled with an acceptance by the other side of the money as a loan. The relationship of borrower and lender must come into existence by the act of parties. In order to constitute an investment within the meaning of section 13(2)(h), the monies must be laid out in such a manner as to acquire some species of property which would bring in an income to the investor. In that view of the matter, where the assessee-trust retired from the partnership firms and monies due to it remained in current account with the firms due to inadequate resources of the firms, it was held that in such circumstances, there was neither a loan nor an investment by the assessee-trust to the firms so as to attract the provisions of section 13(2)(a)/13(2)(h) [*CIT v Nachimuthu Industrial Association*, (1982) 138 ITR 585 (Mad)].

The meaning of the expression ‘investment’, used in rule 19(4) of the Income-tax Rules, 1962, has been discussed in *Phillips Carbon Black Ltd. v CIT* [(1982) 136 ITR 205 (Cal)].

In *Shree Poongalia Jain Swetamber Mandir v CIT* [(1987) 33 Taxman 297 (Raj)], the assessee-trust deposited a certain amount with a firm wherein two of the trustees of the assessee-trust were also partners. The rate of interest was 6 per cent. per annum. The firm lodged with the assessee-trust title deeds of an immovable property belonging to a Hindu undivided family consisting of three members, who were also partners of the firm, with the consent of those members. It was, on facts, held that the lending of money by the assessee-trust to the firm was for adequate security as also for adequate interest. Therefore, the provisions of section 13(2)(a) were not attracted so as to enable forfeiture of exemption.

The expression ‘fund’ in section 13(2)(h) includes both the corpus as well as the income. It cannot be contended that the legislature has intended to apply the word ‘fund’ in a restricted sense only to the accumulated income but not to the corpus [*Talaprolu Bapanaiah Vidya Dharma Nidhi Trust v CIT*, (1987) 167 ITR 482 (AP)].

In construing section 13(2)(h), the meaning of the expression ‘fund’ will have to be determined not only with reference to dictionaries or to commercial parlance or to the principles of accountancy but also in the context of the said section itself. The expression in the said section is ‘funds’ and not ‘fund’. One of the meanings of the said expression ‘funds’ in the dictionaries is money in hand or cash. Thus, in the context of the said section this is the meaning which should be attributed to the expression ‘funds’ in construing the said section. The section contemplates that there will be an investment of funds of a trust. If any other meaning is given to

the expression 'funds', the same will not be available for investment or capable of being invested. If the funds of the trust are construed to include assets other than money in hand or cash or a credit balance in bank account, the same are not capable of being invested as such. Other assets of the trust apart from money in hand or cash will have to be converted into money or cash before the same can be invested.

The expression 'invest' in section 13(2)(h) connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit or financial advantage or return.

It has to be established that a trust having assets in the form of money or cash or a credit balance in a bank account or in any other form capable of being invested was by a positive act and pursuant to a decision of the trust was laid out or committed in a concern of a nature specified before it can be held that such an investment comes within the mischief of section 13(2)(h) [*CIT v Birla Charity Trust*, (1987) 34 Taxman 504, 514 (Cal)].”.

Page 615: section 13:

At the end of clause (b) under the paragraph titled “*Interested persons enumerated—section 13(3)*”, add,— “Further, as a result of amendment made by the Taxation Laws (Amendment) Act, 1984, the figure of substantial contribution has been raised from Rs. 5,000 to Rs. 25,000, for and from assessment year 1985-86.”.

Page 615: section 13:

Before line 3 from bottom, add,—

“Question of law.—The question whether in the circumstances of a particular case, the provisions of section 13(1)(c) were properly applied or not is one of law [*CIT v Govindram Saksariya Charity Trust*, (1984) 145 ITR 253 (MP)].”.

Page 623: section 13A:

At the end of the page, add,—

“The following departmental circular is relevant to section 13A:—

“*Assessment of political parties—Filing of returns—Regarding.*—Section 13A has been inserted in the Income-tax Act, 1961, by the Taxation Laws (Amendment) Act, 1978, and has come into effect from 1-4-1979. Under section 13A, any income of a political party chargeable under the heads “Interest on securities”, “Income from house property”, “Income from other sources” or any income by way of voluntary contributions is exempt from income-tax.

2. Under *Explanation* to section 13A, political party means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election

Symbols (Reservation and Amendment) Order, 1968, and includes a political party deemed to be registered with that Commission under the proviso to sub-paragraph (2) of that paragraph.

3. The exemption under section 13A is subject to the fulfilment of three conditions specified in the proviso to section 13A. These conditions are:

- (i) the political party keeps and maintains such books of account and other documents as would enable the Income-tax Officer to properly deduce its income therefrom;
- (ii) in respect of each voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contributions;
- (iii) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288.

4. Sub-section (4B) has been inserted in section 139 by the Taxation Laws (Amendment) Act, 1978, under which every political party is obliged to file every year a return of total income voluntarily. The total income for this purpose is to be computed without giving effect to the provisions of section 13A. If *such* total income exceeds the maximum amount which is not chargeable to tax, the liability of the political party to file the return of income voluntarily arises. As regards filing of returns by the units of a political party at State or District levels is concerned, it will depend upon whether these units are only branches of the national party and their receipts and expenditure form part of the account of the national party. If so, the units need not file separate returns of income. In the case where units are separately registered as political parties with the Election Commission of India in terms of para. 2 above, the requirement of filing of return by these units will apply as in the case of parent unit.' [Circular No. 412, dated 2nd March, 1985.]".

Pages 627-628: section 14:

On the subject "*Heads of income are mutually exclusive*", reference may also be made to *CIT v Trustees of H.E.H. The Nizam's Miscellaneous Trust*, (1986) 160 ITR 253 (AP).

Page 628: section 14:

In line 17 from top, after "61 ITR 428 (SC)", add,— " ; *Smt Kavita Sanghi v CIT*, (1982) 133 ITR 48 (MP); *Parekh Traders v CIT*, (1984) 150 ITR 310 (Bom)" [holding that income falling under one specific head cannot be taxed under another].

Page 629: section 14:

At the end of the paragraph titled "*Residuary head, when can be resorted to*", add,— "A view similar to that of the Calcutta High Court has been

taken by the Patna High Court in *CIT v Gaya Sugar Mills Ltd.* [(1986) 160 ITR 933 (Pat)].”.

Page 630: section 14:

In line 15 from top, after “88 ITR 169, 191 (SC)”, add,— “ ; *Brooke Bond & Co. Ltd. v CIT*, (1986) 162 ITR 373 (SC)”.

Page 631: section 14:

After the paragraph titled “*Income not chargeable to tax unless it falls under any of the classified heads*”, add,—

“Question of law.—The question whether a particular income fall under one head or another is one of law [*CIT v Water & Power Development Consultancy Services (India) Ltd.*, (1987) 163 ITR 329 (Del)].”.

Pages 636-37: section 16:

At the end of paragraphs titled “*Legislative amendments to section 16*”, add,—

“Section 16 has also been amended by—

- the Finance Act, 1982 (14 of 1982)†;
- the Finance Act, 1983 (11 of 1983)†;
- the Taxation Laws (Amendment) Act, 1984 (67 of 1984)†;
- the Finance Act, 1985 (32 of 1985);
- the Finance Act, 1986 (23 of 1986).

For the effect of the amendments made by Acts marked†, see pages xlii-xliv of Vol. 4.

The scope and effect of the insertion of a new *Explanation* 2 in section 16(i) by the Finance Act, 1985, have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘*Modification of provisions relating to standard deduction in the case of salaried taxpayers.*—11.1 Under the existing provisions of the Income-tax Act, salaried taxpayers are entitled to a standard deduction in the computation of taxable salary. The deduction is allowed in an amount equal to 25 per cent. of the salary or Rs. 6,000, whichever is less. The standard deduction is, however, restricted to Rs. 1,000 in the following cases:—

(i) where the employee is provided with a motor car, motor cycle, scooter or other moped by his employer for use otherwise than wholly and exclusively in the performance of his duties; or

(ii) where the employee is allowed the use, otherwise than wholly and exclusively in the performance of his duties, of any one or more motor cars, out of a pool of motor cars owned or hired by the employer.

11.2 The Finance Act, 1985, has inserted a new *Explanation* in the section to provide that, for the purposes of the aforesaid provision, the use of any vehicle provided by the employer for journey by the employee from

his residence to his office or other place of work, or from such office or other place of work to his residence shall not be regarded as use of such vehicle otherwise than wholly and exclusively in the performance of his duties.

11.3 This amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'".

The scope and effect of the amendment made in section 16 by the Finance Act, 1986, have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(iii) Modification of provisions relating to standard deduction in the case of salaried taxpayers.—12. At present, the salaried taxpayers are entitled to a standard deduction of 25 per cent. of their salary or Rs. 6,000, whichever is less. The Finance Act has increased the limit of this deduction to 30 per cent. of the salary or Rs. 10,000, whichever is less. This enhanced limit will be applicable from the assessment year 1987-88.'".

Page 637: section 17:

At the end of the paragraphs titled *'Legislative amendments to section 17'*, add,—

"Section 17 has also been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984) [the effect whereof has been discussed at pages xliv-xlvi of Vol. 4] and by the Finance Act, 1985 (32 of 1985), the effect whereof is given in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of the provisions relating to "perquisites".—12.1 Under the existing provisions, the value of any benefit or amenity granted or provided free of cost or at concessional rate by an employer to an employee (not being a director of the company or a person who has a substantial interest in the company) is not regarded as a perquisite received by the employee unless the employee's income under the head "Salaries" exclusive of the value of any benefits or amenities not provided for by way of monetary payment exceeds Rs. 18,000. In the context of the raising of the exemption limit, the Finance Act, 1985, has raised the said limit to Rs. 24,000. It has also been clarified that, in cases where salary is received from more than one employer, the aggregate salary from these employers, will have to be taken into account for the purposes of this provision.

12.2 The amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.

Discontinuance of the provision for taxation of perquisites represented by interest-free loans or loans at concessional rate of interest to employees.—

13.1 Under sub-clause (vi) of clause (2) of section 17 of the Income-tax Act, inserted by the Taxation Laws (Amendment) Act, 1984, where

the employer has advanced any loan to an employee for building a house or purchasing a site or a house and a site or for purchasing a motor car, and either no interest is charged by the employer on such loan or interest is charged at a rate which is lower than the rate of interest which the Central Government may specify in this behalf by notification in the Official Gazette, an amount calculated on the following basis is regarded as perquisite received by the employee and charged to tax accordingly:—

(i) in a case where such loan is advanced without charging any interest, the amount of interest on such loan at the rate notified;

(ii) in a case where such loan is advanced by charging interest, at a rate which is lower than the notified rate, the amount of the difference between the interest on such loan at the rate notified and the interest charged by the employer.

13.2 The provision does not apply to employees of the Central Government or any State Governments or an employee (not being a director of a company or a person who has a substantial interest in the company) whose income under the head "Salaries" (exclusive of all benefits and amenities not provided for by way of monetary payment) does not exceed Rs. 18,000.

13.3 As a measure of relief to salaried taxpayers, the Finance Act has omitted the aforesaid provision with effect from the date of its insertion, namely, 1st April, 1985. In consequence thereof, sub-clause (vi) of clause (b) in *Explanation 2* to section 40A(5) of the Income-tax Act, which defines the term "perquisite" for the purposes of the said section to include the perquisite value represented by interest-free loans or loans at concessional rates of interest, has also been deleted."

Page 639: section 15:

At the end of paragraph titled "*Relationship of employer and employee is essential—sine qua non*", add,— "*Also see, CIT v Smt. Dipali Goswami, (1985) 156 ITR 36 (Cal).*"

In the facts of *CIT v West Bengal State Electricity Board* [(1987) 166 ITR 507 (Cal)], it was held that the foreign engineer deputed by the Japanese company to supervise an electricity project of the Board was not an employee of the Board but that of the Japanese company."

Pages 647-648: section 15:

At the end of paragraphs titled "*Director and managing director*", add,— "*In the facts of CIT v Travancore Chemical Mfg. Co. [(1982) 133 ITR 818 (Ker)], the managing director was held to be an employee of the assessee-company.*"

Page 652: section 15:

In the last line of the paragraph titled "*Provisions, when can be invoked (wrongly printed as involved)?*", for "*1 KB 500 (Cal)*", read "*1 KB 500 (CA)*".

Pages 653-654: section 17(2):

At the end of paragraph titled "*A vested right essential*", *add*,— "Also see, *CIT v M. N. Nadkarni*, (1986) 161 ITR 544 (Bom)].".

Page 655: section 17(2)(i):

After line 16 from top, *add*,—

"Unless the assessee-employee expressly forgoes his right of occupying the rent-free accommodation provided to him by his employer, the value of rent-free accommodation is to be taxed as perquisite even though the assessee has not utilised the accommodation as a matter of fact [*CIT v Bawa Singh Chauhan*, (1984) 150 ITR 8 (Del)].

The question whether an assessee has been provided with a rent-free accommodation is ordinarily a question of fact [*CIT v Krishan Kumar Modi*, (1985) 49 CTR (All) 306].".

Page 655: section 17(2)(i):

In line 29 from top, after "99 ITR 419 (Mad)", *add*,— " ; *CIT v H. D. Dennis*, (1982) 135 ITR 1 (Bom)".

Page 656: section 17(2)(i):

Lines 5 and 6 from top: The Supreme Court has dismissed [see, (1984) 145 ITR (St.) 4] a special leave petition against the decision in *Murlidhar Dalmia v CIT* [(1981) 129 ITR 67 (Del)].

Page 656: section 17(2)(i):

Before the paragraph titled "*Military personnel*", *add*,—

"Rent-free accommodation to a minister, etc.—exemption.—The value of rent-free furnished residence (including maintenance thereof) provided to a minister, an officer of Parliament or the leader of the opposition is not includible in the computation of his income chargeable under the head 'Salaries' [see, (1986) 158 ITR (St.) 155-56].".

Page 657: section 17(2)(iii):

At the end of clause (c), *add*,— "Such salary may be from one or more than one employer [*Commander P. Vasudeva v CIT*, (1983) 142 ITR 826 (Del)]. As a result of the amendment of section 17(2)(iii)(c) by the Finance Act, 1985 (32 of 1985), the above view of the Delhi High Court has been turned into a specific statutory provision. Further, the limit of Rs. 18,000 has been increased, by that Act, to Rs. 24,000 for and from assessment year 1986-87.".

Page 658: section 17(2)(iv):

At the end of line 19 from top, *add*,— "The decision in *Vinay Bharat Ram's case* [(1981) 129 ITR 128 (Del)] has been followed in *CIT v Bharat Ram Charat Ram Pr. Ltd.* [(1986) 157 ITR 199 (Del)]. Also see, *CIT v Amco Batteries Ltd.*, (1984) 150 ITR 48 (Karn).

In *M. Krishna Murthy v CIT* [(1985) 152 ITR 163 (AP)], city compensatory allowance, bad climate allowance, shift allowance and incentive bonus were held to be 'perquisites' within the meaning of section 17(2).".

Page 661: section 17(2)(iv):

After line 22 from top, add,—

"V. *Valuation of re-imburement of medical expenses/medical facilities by the employer.*—'Circular No. 33, dated 1-8-1955, stated, *inter alia*, that the following amenities are not to be included in the total income of an employee, as a part of the perquisites provided by the employer:

- (i) Provision of *ordinary* medical facilities to the employee or his family free of charge;
- (ii) Reimbursement of such medical expenses to the employee after they are incurred.

2. Subsequently at page 50 of the priced publication "Filing of Income-tax Return by Non-Corporate, Non-Business Taxpayers" as a part of the Taxpayer Information Series issued by the DI (Publication and Public Relation), it was, *inter alia*, stated:

"Reimbursement of medical expenditure incurred in the case of directors/managers, etc., for self and family, in excess of one month's salary in a year with a ceiling of Rs. 5,000 per annum or three months' salary with a maximum of Rs. 15,000 for a period every three years of service, will be treated as perquisite and taxed as such."

3. The Board have received representations that in disregard of the Board's earlier instructions of 1955, ITOs are reopening the assessments of employees on the basis of the statement made in the priced publication referred to above. A request has been made that the Board should reiterate its earlier instruction of 1955.

4. After carefully considering the matter, the following clarification is issued with the approval of the Central Government.

5. The provision of *ordinary* medical facilities made by an employer to an employee or his family free of charge or reimbursement of such medical expenses to the employee after they are incurred by him, is not to be included in the total income of the employee provided that such amount does not in any financial year exceed one month's salary of the employee. "Salary" for this purpose will include dearness allowance, where paid, but will not include any other allowance/perquisite. This will apply to all classes of employees, including managers/directors.

6. These instructions may be brought to the notice of all officers working in your charge.' [Circular No. 336, dated April 16, 1982.]

VI. *Valuation of perquisites in the form of reimbursement of medical expenses/provision of medical facilities by the employer*—Clarification regarding.—'Circular No. 336, dated 16-4-1982 issued from F. No. 200/108/

77-IT (A-I) provided the clarification that the value of the provision of ordinary medical facilities by an employer to an employee or his family free of charge or reimbursement of such medical expenses to the employee after they are incurred by him is not to be included in the total income of the employee, provided that the amount does not in any financial year exceed one month's salary of the employee. Salary for this purpose was to include dearness allowance, where paid but was not to include any other allowance/perquisite. The circular was to apply to all classes of employees, including managers/directors.

2. Several representations have been received against this circular. The Central Government has reconsidered the matter and has directed that the reimbursement of medical expenses to an employee/provision of medical facilities by an employer to an employee will be taxable only in excess of Rs. 5,000 per annum.

3. The above clarification will come into force from the year 1983-84, i.e., assessment year 1984-85 onwards.' [Circular No. 376, dated January 6, 1984, as corrected by Circular No. 386, dated 6-6-1984.]

VII. *'Valuation of perquisites in the form of reimbursement of medical expenses/provision of medical facilities by the employer—Clarifications regarding.*—Under section 17 of the Income-tax Act, 1961, provision of free medical facilities or reimbursement of medical expenses by an employer is treated as a perquisite in the hands of the employee. According to the existing instructions which are effective from the assessment year 1984-85, reimbursement of medical expenses to an employee/provision of medical facilities by an employer to an employee will be taxable only in excess of Rs. 5,000 per annum.

2. Representations have been made to the Board, both on behalf of the employees of the public sector undertakings as well as those working in the private sector, that these employees have been placed in a disadvantageous position by the issue of the above instructions. It has been requested that reimbursement of medical benefits/medical facilities provided by an employer may not be taxed as perquisites.

3. The matter has been carefully considered. The present circular no doubt hits hard these employees of the public and private sectors on whose medical treatment fairly large amounts have been incurred by their employers and who on their own could never have afforded the expenditure on such unavoidable treatment. The present policy also discriminates against the employees of public sector undertakings as also those working in the private sector against Government employees in whose cases the Government permits reimbursement of expenses on medical treatment or provides free medical attention through Central Government Health Services.

4. In view of the above, the Board have decided that reimbursement of medical expenses, such as, operation fees, hospitalisation charges and cost of medicines, tests, etc., actually incurred in India by the employer on an employee, including managers/directors, and his family members will

not be treated as perquisite provided this expenditure is incurred on medical treatment in a recognised public hospital in India. The genuineness of the expenditure will, however, be examined by the assessing officer at the time of assessment.

5. The above clarifications will come into force from the year 1985-86; i.e., assessment year 1986-87 and onwards.' [Circular No. 445, dated December 31, 1985.]

VIII. *'Reimbursement of medical expenses on treatment in recognised public hospital in India—Clarification regarding.*—Attention is invited to the Board's Circular No. 445 (F. No. 200/177/84-IT(A-I) dated 31-12-1985, wherein it was laid down that the reimbursement by the employer of medical expenses, such as, operation fees, hospitalisation charges and cost of medicines, tests, etc., actually incurred in India by the employee on medical treatment in a recognised public hospital will not be treated as perquisite for the purpose of charging income-tax. Representations have been received by the Board seeking clarification as to the import of the term "recognised public hospital" as used in the said circular.

2. It has been decided in consultation with the Ministry of Health and Family Welfare that the "recognised public hospital" would mean those hospitals which are recognised under GGHS and CS(MA) Rules for the purpose of medical treatment/reimbursement under these rules.' [Circular No. 481, dated 20th February, 1987.]

Page 664: section 17:

In line 11 from bottom, after "123 ITR 734 (Cal)", *add*,— "Also see, *G. S. Ratra v CIT*, (1986) 161 ITR 251 (Raj) [holding that when an employee is compelled to resign on account of circumstances created by the employer, such a resignation is to be regarded as termination of service within the meaning of rule 8(ii) of Part A of the Fourth Schedule to the 1961 Act]".

Page 664: section 17:

At the end of footnote marked *, *add*,— "The rate of 9% was upto 1-6-1983, 9½% upto 22-8-1984, 10% upto 17-6-1985, 10½% upto 31-3-1986. The rate is 12% with effect from 1-4-1986."

Page 665: section 17:

After line 5 from top, *add*,—

"Departmental circular No. 373, dated 14th December, 1983 [(1984) 146 ITR (St.) 59-60] is relevant to rules 68 and 69 of the Income-tax Rules, 1962."

Page 666: section 17:

After the paragraph titled "*Superannuation funds*", *add*,—

"In *Carborundum Universal Ltd. v CBDT* [S.L.P. (Civil) No. 7761 of

1985: (1985) 156 ITR (St.) 161], the Supreme Court has granted special leave to the assessee against the order dated 19-6-1981 of the Member (IT), Central Board of Direct Taxes, affirming the order dated 22-3-1980 of the Commissioner of Income-tax, whereby the Commissioner withdrew with retrospective effect the approval granted on 1-4-1974 by him under rule 2 of Part B of Schedule IV to the Income-tax Act, 1961, to a superannuation fund of the petitioner-company, and disallowed in the computation of the petitioner-company's income, the contributions made to the fund on behalf of two managing directors of the company, on the ground that the said two directors were also directors of another company and as such were not fulltime employees of the petitioner-company and, therefore, under rule 86 of the Income-tax Rules, 1962, they could not be admitted to the benefits of the fund."

Page 666: section 17:

At the end of paragraph titled "*Gratuity funds*", add,—

"In the facts of *Carborandum Universal Ltd. v CIT* [(1984) 146 ITR 1 (Mad)], it was held that there was no violation of rule 101 of the Income-tax Rules, 1962. The Commissioner was directed to accord approval to the gratuity fund."

Page 669: section 17(2):

Refer to Circular No. 7 (LVIII-13) of 1960, dated 2nd March, 1960, printed at serial No. I. The above circular stands superseded by the following departmental circular No. 311 [F. No. 200/50/77-IT(A-I)], dated 24th August, 1981:—

*"Salary and allowances—Valuation of perquisites of free boarding and lodging—Determination of value—Instruction regarding.—*Attention is invited to Boards' Circular dated March 2, 1960 issued from F. No. 35/24/59-IT (A-I) on the above subject.

2. Rule 3 of the Income-tax Rules, 1962, lays down the mode of valuation of perquisites. The provisions of rule 3(a)(iii) would apply for valuation of rent-free residential accommodation provided by an employer to an employee. The valuation of perquisites in the form of free food will have to be determined in terms of rule 3(g).

3. In view of the specific provision contained in the rules as mentioned hereinabove, the circular of 1960 stands superseded."

Page 674: section 17:

After line 23 from top, add,—

*"IV. Valuation of perquisite in the form of rent-free residential accommodation provided by an employer to an employee—Rule 3(a)(iii) of the I.T. Rules, 1962.—*Under rule 3(a)(iii) of the Income-tax Rules, 1962, the value of the perquisite in the form of rent-free residential accommoda-

tion provided by an employer other than the Government and statutory corporations wholly owned by the Government, etc., referred to in rules 3(a) (i) and (ii), is to be taken at 10% of the salary paid to the employee. However, if the actual rental value of the accommodation is in excess of 20% of the salary the value of the perquisite is to be increased by the amount of such excess. Having regard to the high cost of rented accommodation in metropolitan cities instructions had been issued that in the case of rent-free accommodation provided at Bombay, Calcutta, Delhi and Madras only the excess over 30% of the employee's salary should be added for the purpose of determining the perquisite value of the accommodation.

2. The Central Government has had occasion to review the situation in the light of the increasing costs of rented accommodation not only in the aforesaid cities but in all other parts of the country as well. Keeping in view the steep escalation in rents the Central Government has decided that in the case of rent-free accommodation provided by an employer to an employee at Bombay, Calcutta, Delhi and Madras the perquisite value will be calculated by adding the excess over 60% of the salary of the employee. The valuation in regard to other places in India would be with reference to the excess over 50%. The examples given below will clarify the position:

EXAMPLE I

Rent-free Residential accommodation in Bombay/Calcutta/Delhi/Madras.

| | Rs. |
|--|--------|
| Salary of the employee: | 48,000 |
| Rent paid by the employer: | 36,000 |
| <i>Perquisite to be valued as under:</i> | |

| | Rs. | |
|-------------------------------|--------|--------|
| First 10% of salary | 4,800 | |
| Next 50% (ignored) | 24,000 | |
| Excess over 60% | 7,200 | |
| Total value of the perquisite | | 12,000 |

EXAMPLE II

Rent-free Residential accommodation at any other place.

| | Rs. |
|--|--------|
| Salary of the employee: | 48,000 |
| Rent paid by the employer: | 36,000 |
| <i>Perquisite to be valued as under:</i> | |

| | Rs. | |
|-------------------------------|--------|--------|
| First 10% of salary | 4,800 | |
| Next 40% (ignored) | 19,200 | |
| Excess over 50% | 12,000 | |
| Total value of the perquisite | | 16,800 |

3. In cases of rent-free furnished accommodation, an addition in respect of the perquisite by way of furniture @ 10% per annum of the original cost of such furniture is to be made. If such furniture is hired from a third party, the actual hire charges payable should be added.

4. This relaxation will come into effect from the assessment year 1984-85 and will, therefore, relate to tax deduction at source on salaries during financial year 1983-84.' [Circular No. 374, dated December 14, 1983]."

Page 676: section 17(1):

After line 7 from top, *add*,—

"The quantum of salary has to be determined on a proper interpretation of the agreement between the employer and the employee in that regard [see, *CIT v Arun Dua*, (1982) 26 CTR (Cal) 74]."

Page 678: section 17(1):

At the end of paragraph titled "*Deferred annuity*", *add*,— "Also see, *CIT v J. G. Patel* and *CIT v M.G. Patel*, SLP (Civil) Nos. 10132 of 1981 and 635-637 of 1982: (1984) 149 ITR (St.) 92."

Page 679: section 17(1):

At the end of line 8 from top, *add*,— "For the import of the expression 'pension', reference may also be made to *CIT v Smt. Dipali Goswami*, (1985) 156 ITR 36 (Cal)."

Page 682: section 17(3):

Before paragraph titled "*Salary paid in lieu of notice*", *add*,—

"In *CIT v Ajit Kumar Bose* [(1987) 165 ITR 90 (Cal)], the amount received by the employee-assessee was held to be *ex gratia* and not 'compensation' within the meaning of section 17(3)(i), defining the expression 'profits in lieu of salary'.

In *M. Krishna Murthy v CIT* [(1985) 152 ITR 163 (AP)], the house rent allowance paid to an employee, who lives in his own house, has been held to be 'profits in lieu of salary' within the meaning of section 17(3)(ii)."

Page 682: section 17(3):

After paragraph titled "*Salary paid in lieu of notice*", *add*,—

"*Children's benefits*.—Where there is a scheme for some allowance or payment by way of children's benefit, whether or not the same may be treated as a perquisite or profit in lieu of salary in the hands of the assessee-employee has to be judged on the provisions of the relevant scheme. If it is found that the amount is recoverable not by the assessee but by his children, it cannot form part of assessee's salary income [*Addl. CIT v R. S. Garg*, (1982) 133 ITR 1 (Del)]."

Pages 684-685: section 17(1):

At the end of paragraphs titled "*Tax-free salary payment—effect of*", *add*,—

"In *Frank Beaton v CIT* [(1985) 156 ITR 16 (Del)], it was, on the interpretation of the relevant agreement, held that the employee was not entitled to receive tax-free salary. The employer was held responsible to pay tax on the taxable salary of the employee as if it was not tax-free. Any additional tax due, as a result of the treatment of the tax payable by the employer as a perquisite, was to be paid by the employee himself.

Page 687: section 15:

After line 16 from top, *add*,—

"In *CIT v S.P. Jain* [(1987) 167 ITR 161 (SC)], there was a positive finding that notwithstanding the fact that the resolution discontinuing payment of salary to the assessee was passed after the expiry of the relevant period, there had been an oral agreement preceding it to discontinue the payment of salary. In that view of the matter, it was held that the salary payable to the assessee was not assessable in his hands on due basis."

Page 692: section 16:

After line 6 from top, *add*,—

"In the facts of *CIT v P. Gency* [(1986) 162 ITR 434 (Bom)], it was found that the amount paid by the employer to the employee to meet latter's outdoor travelling allowance was not conveyance allowance within the meaning of the then section 16(iv). Therefore, the assessee-employee, who owned a motor car, was held entitled to the deduction under the then section 16(iv)."

Page 695: section 16(i):

After line 8 from top, *add*,—

"Section 16(i) has also been amended by the Finance Act, 1982, the Finance Act, 1983, and the Taxation Laws (Amendment) Act, 1984. For the effect of these amendments, see pages xlii-xliv of Vol. 4.

On the interpretation of section 16(i), reference may also be made to *CIT v P. S. Kalani* [(1986) 159 ITR 681 (MP)]; *CIT v B.N. Kalani & Sons* [(1986) 57 CTR (MP) 306] and *CIT v S. C. Deora* [(1987) 167 ITR 682 (MP)]."

Page 695: section 16(i):

At the end of line 19 from top, *add*,— "The matter was referred to the third judge. The majority judgment in *CIT v Saroop Krishan* [(1985) 153 ITR 1 (Punj)] has held that even upto assessment year 1980-81, a pensioner was entitled to deduction under section 16(i)."

Page 699: section 18:

In lines 8 and 9 from top, after "115 ITR 587 (Bom)", *add*,— " ; *CIT v Narandas & Sons*, (1986) 162 ITR 599 (Bom)" [holding that interest on securities, even though these are held as stock-in-trade, falls to be taxed under section 18].

Pages 702-703: section 19(i):

On the question of allowability of collection charges under section 19(i), reference may also be made to *CIT v Trustees of H. E. H. the Nizam's Miscellaneous Trust* [(1986) 160 ITR 253 (AP)].

Page 704: section 19(ii):

After line 5 from top, *add*,—

“Where such nexus is established, deduction under section 19(ii) for the interest on borrowings is still allowable even though there is no income from such securities in that year [*CIT v Straw Products Ltd.*, (1987) 165 ITR 225 (Cal)].”.

Page 711: section 22:

At the end of line 2 from top, *add*,— “The decision in *Rasiklal Balabhai's* case [119 ITR 303 (Guj)] has been dissented from in *CIT v K. N. Guruswamy* [(1984) 146 ITR 34 (Karn)] holding that where a house property owned by one of the partners of a firm is used for the firm's business, the notional income in respect of such property is includible in the total income of the partner concerned.

But, in *CIT v Bokaro Steel Ltd.* [(1987) 34 Taxman 374 (Pat)], the assessee-company was set up to construct and own an iron and steel works. While the construction work of its factory was in progress and its business had not started, the assessee received, *inter alia*, certain amounts by way of rent from property let out to contractors' employees. It was held, on facts, that the letting out of the property was incidental and subservient to the business of the assessee-company. Such income was taxable as business income and not as property income.

The Supreme Court has dismissed [see, (1987) 165 ITR (St.) 338] a special leave petition, applied for by the assessee, against a judgment dated 10-11-1983 of the Karnataka High Court in ITRC No. 145 of 1980, whereby the High Court answered the reference against the assessee following its judgment in *CIT v K.N. Guruswamy* [(1984) 146 ITR 34 (Karn)].

In *CIT v K. Narendra* [(1983) 143 ITR 418 (Del)], the assessee and his son constituted a partnership. The firm took over a portion of the building belonging to the assessee as also the machinery of a printing press installed there by the assessee. The firm let out such building together with the machinery, etc., of the printing press to a third person. It was held that the rental income of such composite letting cannot be taxed in the hands of the assessee treating him as the owner thereof.”.

Page 714: section 22:

At the end of paragraph titled “*Residential quarters for employees*”, *add*,—

“In the facts of *DLF Housing and Construction Pr. Ltd. v CIT* [(1983) 141 ITR 806 (Del), special leave petition granted by the Supreme Court: (1984) 149 ITR (St.) 130], it was held that in the absence of material on record to suggest that the motivation of letting out of a portion of the

building to the managing director was for facility of business in the sense that it was essential for a better management and control of the assessee's business, the Tribunal was justified in coming to the conclusion that one-half of the building was to be treated as occupied for the assessee's business."

Page 715: section 22:

At the end of line 9 from top, *add*,— "The above view of the Madras High Court has found favour in *CIT v Cawnpore Club Ltd.* [(1984) 146 ITR 181 (All)]. Also see, *CIT v Darjeeling Club Ltd.*, (1985) 153 ITR 676 (Cal); *CIT v Delhi Gymkhana Club Ltd.*, (1985) 155 ITR 373 (Del).

Letting out lodging house.—The assessee, carrying on business in groceries, constructed a building consisting of 68 rooms and provided various amenities therein. These were let out individually. It was held that the rental income was to be assessed as business income as the lodging house was being run on a commercial basis rather than as the owner of a property [*CIT v V. Shanmugham*, (1984) 147 ITR 692 (Mad)]."

Page 716: section 22:

After line 9 from top, *add*,—

"Other illustrative cases.—In the facts of the following cases, it was held that rental income/annual letting value is to be assessed as income from house property:—

(1) *DLF United Ltd. v CIT*, (1984) 149 ITR 24 (Del) [the assessee, carrying on business of colonisation, built a school premises and let it out on perpetual lease at Re. 1 per year to a trust for running a school—it was held that the estimated net annual value of Rs. 5,000 was assessable under section 22].

(2) *CIT v Bhakhtawar Construction Pr. Ltd.*, (1986) 162 ITR 452 (Bom) [building was leased out to tenants—air-conditioning facility provided under separate agreement—income held taxable under section 22 and not under section 56]."

Page 716: section 22:

At the end of paragraph titled "*Splitting-up of a composite rent*", *add*,—

"In the facts of *CIT v Model Manufacturing Co. Pr. Ltd.* [(1986) 159 ITR 270 (Cal)], the service charges realised for rendering services, etc., were held to be assessable as "Income from other sources". Also see, *D. C. Shah v CIT*, (1979) 118 ITR 419 (Karn).

On the other hand, in the facts of *CIT v Russell Properties Pr. Ltd.* [(1982) 137 ITR 473 (Cal)], the service charges, etc., were held to be assessable as business income. Also see, *CIT v Associated Building Co. Ltd.*, (1982) 137 ITR 339 (Bom)."

Page 719: section 22:

After line 15 from top, *add*,—

“Deemed owner is also ‘owner’.—Section 27, in its certain clauses, enacts deeming provisions about ownership for the purposes of sections 22 to 26. These are:—

- (1) An individual who transfers otherwise than for adequate consideration any house property—
 —to his or her spouse, not being a transfer in connection with an agreement to live apart, or
 —to a minor child not being a married daughter,
 is deemed to be the owner of the house property so transferred [section 27(i) operative from 1-4-1962].
- (2) The holder of an impartible estate is deemed to be the individual owner of all the properties comprised in the estate [section 27(ii) operative from 1-4-1962].
- (3) A member of a co-operative society to whom a building or part thereof is allotted or leased under a house building scheme of the society is deemed to be the owner of that building or part thereof, as the case may be [section 27(iii) operative between 1-4-1962 and 31-3-1988].
- (4) A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, is deemed to be the owner of that building or part thereof [section 27(iii) substituted by the Finance Act, 1987, with effect from 1-4-1988].
- (5) A person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, is deemed to be the owner of that building or part thereof [section 27(iii-a) introduced by the Finance Act, 1987, with effect from 1-4-1988].
- (6) A person who acquires any rights (excluding any right by way of lease from month to month or a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in section 269UA(f) is deemed to be the owner of that building or part thereof [section 27(iii-b) introduced by the Finance Act, 1987, with effect from 1-4-1988].

The scope and effect of the amendment made in section 27 of the 1961 Act by the Finance Act, 1987 (11 of 1987), as also of other allied provisions, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Enlarging the meaning of ownership of house property.—23.1 The Finance Act, 1987, has extended the meaning of the expression “ownership” for

the purpose of computing income under the head "Income from house property". The expression ownership meaning legal ownership had the effect of excluding cases where an assessee possessed all rights to an immovable property except the husk of the title.

23.2 The practice of limited companies constructing multi-storeyed buildings and allotting or leasing flats to the shareholders is quite prevalent these days. In such a situation though the limited company is the legal owner, the member subscribers to the shares of the company to whom the flats are allotted are the real owners who enjoy the income therefrom. In several States where the Apartment Act has not been introduced there is a legal hurdle in transferring the ownership of these flats to individual shareholders. Since the legal ownership remains with the company, the income therefrom is taxed in their hands under the head "Income from house property". At the same time, since the shareholder actually enjoys the income he is assessed under the head "Income from other sources". This has led to taxing the same income twice. There is another practice whereby property is transferred to the purchaser after receiving the consideration but without getting the sale registered under section 54 of the Transfer of Property Act, 1882. This is done by executing power of attorney in favour of a person who by virtue of that power of attorney enjoys the property. In such cases, legally, the property remains with the registered owner but for all practical purposes the holder of the power of attorney is the owner. A similar situation arises where possession of any immovable property is allowed to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. All these types of transactions have the effect of transferring the house property in fact, though not in law. With the extended definition of the expression ownership, transactions covered by section 269UA of the Income-tax Act, 1961 (including transfer of property by power of attorney), shall be considered as having the effect of transfer of title. The Finance Act, 1987, by insertion of sub-clauses (iii), (iiia) and (iiib) in section 27, covers all the transactions referred to above for the purpose of determining the ownership of the property for assessing income under the head "Income from house property".

23.3 For the sake of uniformity and consistency, consequential amendments in the Wealth-tax Act and Gift-tax Act have also been made as a similar situation exists in the allied statutes [Section 2(m) of the Wealth-tax Act and section 2(xii) of the Gift-tax Act].

23.4 The Finance Act, 1987, has shifted, the liability to taxation, from the legal owner to the real owner in respect of some transfers, by introducing deeming provisions. The question of taxing the legal owner, e.g., a builder of multi-storeyed flats under the head "Income from house property" would, consequently, not arise.

23.5 This amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years.'".

Page 720: section 22:

After line 21 from top, *add*,—

"In the facts of *P. Joseph Swaminathan v CIT* [(1984) 145 ITR 198 (Mad)], the property was registered in the name of a son of the assessee. The assessee, however, was found to be the real owner. Therefore, the assessment of income from the property in the assessee's hand was upheld."

Page 722: section 22:

At the end of the paragraph titled "*Limited estate*", *add*,—

"But a life-estate holder who has no right to reside or let out till the earlier occupier voluntarily vacates the property concerned, cannot be treated as owner so long as the earlier occupier continues in occupation [*M. P. Gnanambal v CIT*, (1982) 136 ITR 103 (Mad); *M. P. Gnanambal Ammal v CIT*, (1985) 152 ITR 659 (Mad)]."

Page 723: section 22:

In line 13 from top, after "120 ITR 892 (Cal)", *add*,— " ; *D. R. Puttanna Sons Pr. Ltd. v CIT*, (1986) 162 ITR 468 (Karn)".

Page 723: section 22:

Before paragraph titled "*Owned by firm*", *add*,—

"*Land belonging to assessee, super-structure to another*.—In *Saifuddin v CIT* [(1985) 156 ITR 127 (Raj)], on a plot of land belonging to the assessee, a building was constructed by the assessee and his two brother, sharing equally the expenditure. It was held that the income from property belonged to the three in equal proportion."

Page 724: section 22:

Before line 12 from bottom, *add*,—

"*Other cases about ownership*.—In the facts of the following cases, the assessee was held not the owner of the property:—

(1) *CIT v Mumbadevi Mansion Co-owners Housing Co-operative Pr. Ltd.*, (1983) 143 ITR 150 (Bom)[assessee-lessee surrendering to the lessor the lease of the land as also the building built by the assessee—lessor grants a fresh lease of the land and building to the assessee—held, assessee could not be treated as owner].

(2) *CIT v Jethalal Nanji & Bros.*, (1987) 167 ITR 191 (AP) [assessee-firm owned a plot of land and obtained permission for constructing a building comprising seven flats—for construction purpose, a separate account was opened in the firm's books, the total whereof was divided into seven equal portions, and debited one to each of the seven partners of the

firm—held, that the firm was not the owner of the building but each of the seven partners was owner of the flat assigned to him].”.

Pages 725-726: section 22:

At the end of the paragraph titled, “*‘Income from house property’ in the hands of a person who is not the owner cannot be taxed as ‘Income from other sources’*”, add,—

“The decision in *CIT v T. P. Sidhwa* [(1982) 133 ITR 840 (Bom)] has been applied in *CIT v Trustees of H.E.H. the Nizam’s Miscellaneous Trust* [(1986) 160 ITR 253 (AP)] and has been dissented from in *Sushil Ansal v CIT* [(1986) 160 ITR 308 (Del)].”.

Page 726: section 22:

In line 6 from bottom, after “117 ITR 278 (AP)”, add,— “ ; *CIT v Hans Raj Gupta*, (1982) 137 ITR 195 (Del); *Dr. Raja Sir M. A. Muthiah Chettiar v CIT*, (1984) 148 ITR 532 (Mad); *CIT v Palaniappa Enterprises*, (1984) 150 ITR 237 (Mad); *Sushil Ansal v CIT*, (1986) 160 ITR 308 (Del)” [on the point “*Change of ownership, how effected?*”].

Page 727: section 22:

Line 3 from top: For “*Syed Saddique Imam v CIT*, (1978) 111 ITR 475”, read, “*CIT v Syed Saddique Imam*, (1978) 111 ITR 475”.

Page 727: section 22:

In line 14 of the paragraph titled “*Effect of section 53A of the Transfer of Property Act, 1882*”, after “AIR 1966 SC 1438”, add,— “ ; *CIT v Sultan Bros. Pr. Ltd.*, (1983) 142 ITR 249 (Bom) Cf. *CWT v H. H. Maharaja F. P. Gaekwad*, (1983) 144 ITR 304 (Guj), impliedly approved in *Nawab Sir Mir Osman Ali Khan v CWT*, (1986) 162 ITR 888 (SC); *CWT v Meattles Pr. Ltd.*, (1985) 153 ITR 201 (Del); *Chettinad Corporation Pr. Ltd. v Tamil Nadu Agri. ITAT*, (1987) Tax LR 602 (Mad)”.

Page 727: section 22:

At the end of paragraph titled “*Effect of section 53A of the Transfer of Property Act, 1882*”, add,—

“However, in *Addl. CIT v Sahay Properties and Investment Co. Pr. Ltd.* [(1983) 144 ITR 357 (Pat), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 60], the assessee took physical possession of an immovable property after paying the entire consideration. Under the agreement for sale, the assessee had the right to call upon the transferor to register a proper conveyance, but this right was not exercised. It was held that the assessee could be treated as the owner of the property within the meaning of section 22. The above Patna decision has, rightly been dissented from in *CIT v Tamil Nadu Agro-Industries Corporation Ltd.* [(1987) 163 ITR 61 (Mad)].”.

Page 728: section 22:

At the end of line 17 from bottom, *add*,— “Also see, *Darbar Shivraj-kumar v CGT*, (1981) 131 ITR 647 (Guj); *Arundhati Balkrishna v CIT*, (1982) 138 ITR 245 (Guj); *Amarchand Jainarain Agarwal v Union of India*, (1983) 142 ITR 410 (Bom), affirming *Amarchand J. Agarwal v Union of India*, (1983) 142 ITR 402 (Bom).”.

Page 728: section 22:

After the paragraph titled “*Onus*”, *add*,—

“**Question of fact.**—The question about the proportion and extent to which a particular person is owner of a property is one of fact [*Kaur Singh v CIT*, (1983) 144 ITR 756 (Punj)].

Question of law.—The question whether rental income from property agreed to be purchased by the assessee is assessable in his hands or not is a question of law [*CIT v Gun Nidhi Dalmia*, (1987) 60 CTR (Del) 198; *CIT v Gun Nidhi Dalmia*, (1987) 168 ITR 282 (Del)].”.

Page 730: section 22:

After line 5 from top, *add*,—

“In the facts of *CIT v Mrs. Hasina Begum* [(1986) 158 ITR 215 (Cal)], the amount advanced by the husband to his wife for construction of a house property on a land belonging to her, has been held to be treated as a loan by the husband to the wife.

Also see, ‘*House property transferred without adequate consideration to wife or a minor child*’, at pages 1853-54 of Vol. 2.”.

Page 730: section 22:

After line 15 from top, *add*,—

“Also see, “*Previous year in respect of house property income*” at page 168 of Vol. 1.”.

Page 734: section 23:

In line 10 from top, for “*reduced by*”, read “*as reduced by*”.

Page 735: section 23:

Before line 10 from bottom, *add*,—

“Section 23 has also been amended by—

—the Finance Act, 1982 (14 of 1982)‡;

—the Taxation Laws (Amendment) Act, 1984 (67 of 1984)‡;

—the Finance Act, 1986 (23 of 1986).

For the effect of the amendments made by the Acts marked‡, see pages xlvi-xlix of Vol. 4.

The scope and effect of the amendment made by the Finance Act, 1986, have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

(iv) Exemption of income from one self-occupied house property —13.1
Under the existing provisions of section 23(2) of the Income-tax Act, the annual value of a self-occupied property is first determined in the same manner as if the property had been let and it is reduced by one-half of such amount or Rs. 3,600, whichever is less. Where the sum so arrived at exceeds 10 per cent. of the total income of the owner of the property, computed without including the income from such property and without making any deduction under Chapter VI-A of the Income-tax Act, the excess is disregarded. Where the assessee is owner of more than one such house used for the purposes of his own residence, the above concessional treatment applies only in respect of one residential house, which the assessee may specify in this behalf. In respect of residential houses other than the one whose annual value is reduced as above, the annual value is determined as if such houses had been let. Further, where the owner has only one residential house and it cannot be occupied by him due to his employment, business or profession being carried on at some other place, and the owner resides in a building which does not belong to him at the other place; the annual value in such case is taken as "nil" provided certain conditions are satisfied.

13.2 The Finance Act has amended section 23, modifying the method of determining the annual value of a self-occupied house property. The annual value, accordingly, will be determined as under:—

13.3 *House property consisting of a house or a part of the house in the occupation of the owner for residence from which no other benefit is being derived by him.* Annual value

(a) If the property is not let during any part of the previous year. Nil

(b) If the property is let in parts during the previous year. The annual value of the entire property will be first determined as if it is let. Out of the above, the annual value of the self-occupied portion will be deducted for the full year. Further, for the let out portion, the proportionate annual value for the period during which that part was self-occupied is to be excluded. The balance will be the taxable annual value.

(c) If the property is let during any part of the previous year. The annual value will be determined as if the property had been let. Out of the above, the propor-

tionate value for the period for which it is self-occupied will be excluded and the balance will be the taxable annual value.

13.4 Where more than one house property is in the occupation of the owner for his residence in respect of which the assessee may specify one of such properties, the annual value shall be determined in the same manner as discussed at (a), (b) and (c) of para. 13.3 In respect of the remaining properties, the annual value will be determined as if such house or houses had been let.

13.5 As a consequential amendment, section 23(2A) has been omitted.

13.6 Section 23(3) which has been substituted provides that where a house property consists of one residential house only and it cannot be actually occupied by the owner owing to his employment, business or profession being carried on at any other place compelling him to reside at that place in a building not belonging to him, its annual value shall be taken to be *nil*, provided the house is not actually let and no other benefit therefrom is derived by the owner.

13.7 The above amendments to section 23 shall apply in relation to the assessment year 1987-88 and subsequent years.'".

Page 736: section 23:

Line 7 from top: The decision in *CIT v Dalhousie Properties Ltd.* [(1979) 116 ITR 289 (Cal)] has been affirmed in *CIT v Dalhousie Properties Ltd.* [(1984) 149 ITR 708 (SC)], holding that liability in respect of municipal taxes which an owner has to discharge is eligible for deduction even though not paid or even where such liability is disputed. In that view of the matter, enhanced tax relating to more than one earlier year demanded during the current year has been held to be deductible in computing the annual value of the current year [*CIT v L. Kuppuswamy Chettiar*, (1981) 132 ITR 416 (Mad)].

Similar is the case where the liability arises as a result of a court decision [*CIT v Parekh Kothi Ltd.*, (1986) 160 ITR 864 (Cal)].

Page 736: section 23:

At the end of line 26 from top, *add*,— "The contrary view to the effect that in computing the annual value of a self-occupied house property, municipal taxes paid by the owner-assessee were not deductible taken by the Bombay High Court in *CIT v I. Chatterji* [(1986) 161 ITR 535 (Bom)] is, with respect to their Lordships deciding the case, not accurate on the point. It is pertinent to note that the decision in that *Chatterji's* case is based on a Bombay Full Bench decision in *New Piecegoods Bazar Co. Ltd. v CIT* [(1947) 15 ITR 319 (Bom—FB)] which decision itself had long been reversed by the Supreme Court in *New Piece Goods Bazar Co. Ltd. v*

CIT [(1950) 18 ITR 516 (SC)]. Thus, the dissent in the *Chatterji's* case from the view in *Arvind Norottam's* case [(1976) 105 ITR 378 (Guj)] and *Rajeswari's* case [(1977) 110 ITR 443 (Mad)] is not well placed.”.

Page 737: section 23:

Before line 12 from bottom, *add*,—

“In the facts of *CIT v Gwalior Commercial Co. Ltd.* [(1983) 141 ITR 930 (Cal)], it has been held that in determining the annual value of the house property, no account should be taken of the expenditure incurred in the purchase of air-conditioners, furniture and fans for the use of the tenants.

In the facts of *CIT v Gillanders Arbuthnot & Co. Ltd.* [(1983) 142 ITR 598 (Cal)], it has been held that the occupier's share of municipal tax realised by the assessee-owner from its tenants could not be taken into consideration for computing the annual value of the property.”.

Pages 737-738: section 23:

At the end of paragraph titled “*Municipal valuation and annual value*”, *add*,—

“In *CIT v R. Dalmia* [(1987) 163 ITR 517 (Del)]; *CIT v R. Dalmia* [(1987) 163 ITR 519 (Del)]; *CIT v R. Dalmia* [(1987) 163 ITR 524 (Del)] and *CIT v R. Dalmia* [(1987) 163 ITR 525 (Del)], it has been held that municipal valuation can be taken as the annual letting value of property.

The manner of determination of the annual value under a municipal law has been discussed in *Geep Flashlight Industries Ltd. v Nagar Mahapalika* [(1983) 140 ITR 82 (All)].

In *CIT v M.R. Alagappan* [(1987) 164 ITR 690 (Mad)], it has been held that the annual letting value fixed by the municipal authorities would be a relevant consideration for the purpose of determining the annual letting value under section 23.”.

Page 738: section 23:

At the end of line 3 from top, *add*,— “In the facts of *CIT v Prabhabati Bansali* [(1983) 141 ITR 419 (Cal)], the Tribunal was held justified in directing the Income-tax Officer to determine the annual value of the property afresh with reference to its rateable value as determined by the municipal corporation.”.

Page 739: section 23:

At the end of paragraph titled “*A question of law*”, *add*,—

“The question whether the assessee was entitled to exemption under a particular provision in respect of annual letting value is one of law [*CIT v Princess Usha Trust*, (1984) 145 ITR 201 (MP)].”.

Page 739: section 23:

At the end of the last line, *add*,— “But the rent fixed under a lease deed, which is found to be not genuine, cannot be made the basis for determining the annual value [*Smt. Protima Roy v CIT*, (1982) 138 ITR 536 (Cal)].”.

Page 741: section 23:

In line 23 from top, after “131 ITR 589 (SC)”, *add*,— “; *Dr. Balbir Singh v MCD*, (1985) 152 ITR 388 (SC); *J. Dalmia v CIT*, (1982) 138 ITR 653 (Del); *Ganga Prasad Budhia v CIT*, (1983) 143 ITR 75 (Pat); *Smt. Raj Kumari Nanda v CIT*, (1984) 146 ITR 66 (Del); *Ajay Enterprises Pr. Ltd. v Delhi Municipal Corporation*, AIR 1986 Del 218; *Smt. Surjit Kaur v Municipal Corporation*, (1987) 163 ITR 56 (Punj)”.

Page 742: section 23:

At the end of the page, *add*,—

“Where a building is constructed within a period contemplated by the second proviso to section 23(1), the assessee is entitled to concessional tax treatment in respect of that building even though a portion thereof is in the occupation of the assessee-owner. However, in computing the quantum of relief, the annual value of the residential unit which is in the occupation of the assessee is not eligible for relief or the assessee should not be given any relief for that residential unit [*S. C. Majumdar v CIT*, (1983) 141 ITR 486 (Cal)]

The relief under the different clauses of the second proviso to section 23(1) is in respect of a building comprising one or more residential units constructed during the specified period and is not dependent upon its user by the tenant to whom the residential unit was let out [*Dr. J.V. Desai v CIT*, (1985) 154 ITR 828 (AP)].”.

Page 743: section 23:

In line 15 from top, after “(1981) Tax LR 1011, 1013 (Ker)”, *add*,— “=(1981) 132 ITR 605 (Ker); *C. H. Kesava Rao v CIT*, (1985) 156 ITR 369 (Mad)” [holding that each room was not a separate residential unit eligible for concessional tax treatment].

Page 744: section 23(2):

Before line 9 from bottom, *add*,—

“In *Addl. CIT v H. L. Gulati* [(1982) 138 ITR 648 (All)], the assessee’s wife constructed a house by utilising amount gifted by the assessee to her. It was held that the assessee’s wife was the ‘owner’ of the house and not the assessee. Therefore, in determining the annual value, the limit of 10 per cent. specified in the proviso to section 23(2), as it stood up to 31st March, 1987, has to be worked out with reference to the other income of assessee’s wife and not with reference to the assessee’s own other income.”.

Page 745: section 23(2):

At the end of line 7 from top, *add*,—"The decision in *Mahendra J. Shah's* case [(1979) 118 ITR 902 (Bom)] has been followed in *CIT v Shah Construction Co. Ltd.* [(1983) 142 ITR 696 (Bom)].

Where the house property owned by a firm is occupied by a partner for his personal residence, the benefit of section 23(2) about self-occupation is not available [*CIT v Dewan Chand Dholan Dass*, (1981) 132 ITR 790 (Del)].".

Page 747: section 23(3):

After line 3 from top, *add*,—

"The benefit of section 23(3) cannot be availed of if the non-occupation of the assessee's house property is for purposes of personal convenience [*Shikharchand Jain v CIT*, (1983) 140 ITR 552 (MP); *Shikharchand Jain v CIT*, (1986) 160 ITR 564 (MP)]. But in *CIT v Mr. Justice Avadh Behari Rohatgi* [(1986) 157 ITR 441 (Del)], the house property owned by the Judge remained vacant as the Judge occupied official residence by reason of his office. The benefit of section 23(3) was held available.".

Page 750: section 24:

After line 16 from top, *add*,—

"Section 24 has also been amended by the Finance Act, 1983 (11 of 1983), and by the Finance Act, 1986 (23 of 1986). For the effect of the amendment made by the Finance Act, 1983, see, pages xlix-1 of Vol. 4. The scope and effect of the amendment made by the Finance Act, 1986, have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(v) *Restriction on deduction from income from house property.*—
14.1 By an amendment of section 24 of the Income-tax Act, it has been provided that where the self-occupied house property is acquired with the help of borrowed funds, a deduction in respect of interest payable up to a maximum of Rs. 5,000 per annum on such borrowed funds will be allowed.

14.2 This provision will be applicable from the assessment year 1987-88 onwards.'".

Page 751: section 24(1)(i):

At the end of line 27 from top, *add*,—"Also see, *CIT v Raipur Flour Mills Pr. Ltd.*, (1984) 145 ITR 205 (MP).

The 'annual value' in section 24(1)(i) refers to the annual value determined under section 23(1) read with the first proviso thereto without resorting to the second proviso thereto [*Addl. CIT v Instrumentation Ltd.*, (1986) 160 ITR 689 (Raj)].".

Page 752: section 24(1)(iv):

At the end of line 8 from top, *add*,—

“The word ‘voluntarily’ in section 24(1)(iv) cannot be understood as signifying a meaning opposite to the words ‘by operation of law’. If that was the intention of Parliament, it would have used the words ‘by act of parties’, which is the expression generally understood as the opposite of the words ‘by operation of law’. Here, the word ‘voluntarily’ must be understood as distinct from, and as opposed to, the word ‘involuntarily’. The word ‘involuntarily’ means without there being any option, *i.e.*, under an enforceable obligation. Thus, where a person creates an annual charge to meet an existing, genuine, legal or contractual obligation, it would not be a case of creating a charge voluntarily [*CIT v Rajah Dhanrajiriji*, (1985) 154 ITR 719, 722 (AP)]. In that case, the assessee created a mortgage in respect of a house property under the pressure of a court sale. Further, an equitable mortgage was created because the creditor demanded additional security. As to the allowability of the interest paid on these mortgages, it was held that such interest was deductible under section 24(1)(iv) because it could not be said that the charge was created by the assessee ‘voluntarily’.”.

Page 753: section 24(1)(iv):

After line 13 from top, *add*,—

“Any expenditure incurred by an owner on itself or himself or any obligation of the owner to incur certain expenditure on itself or himself could not form part of any annual charge on the property because, in such a case, the assessee is the owner of the property himself or itself. In that view of the matter, the expenses incurred out of the income of a property vested in a deity on the *Puja* of the deity itself cannot be termed as ‘annual charge’ on the property. However, expenses incurred on the *puja* of another deity do constitute an annual charge within the meaning of section 24(1)(iv) [*CIT v Saradeswar Siva Linga*, (1983) 140 ITR 953 (Cal)].

In *CIT v Pravin Ratilal Thakkar* [(1987) 32 Taxman 403 (Bom)], under a deed executed by the assessee, he was to pay to his wife an annual sum out of his one-half share in the net income of certain house properties. It was held that the amount was deductible as ‘annual charge’ under section 24(1)(iv), as it stood prior to its amendment by the Finance Act, 1968, with effect from 1st April, 1969.

In *Smt. Sunandamma v CIT* [(1987) 164 ITR 446 (Karn)], the interest payable on estate duty has been held not to be an ‘annual charge’ within the meaning of section 24(1)(iv) read with section 27(iv).

Also see, *Smt. Savita Mohan Nagpal v CIT*, (1985) 154 ITR 449 (Raj).”.

Page 753: section 24(1)(iv):

After line 9 of the paragraph titled “*Capital charge*”, *add*,—

“Expenditure incurred by the assessee on the marriage of his sister out of the income of the property inherited by the assessee under the terms of

a will, has been held to be a capital charge not deductible under section 24(1)(iv) [*CIT v P. Satish Pai*, (1986) 162 ITR 457 (Karn)].”.

Page 754: section 24(1)(iii):

At the end of line 11 from the bottom, *add*,—“In other words, the purpose for which the mortgage was created was immaterial for the purpose of allowability of deduction under the then section 24(1)(iii) [Cf. *Ruby Rubber Works Ltd. v Ag. ITO*, (1983) 139 ITR 218 (Ker)].”.

Page 755: section 24(1)(iii):

At the end of line 3 from top, *add*,—“The Supreme Court had dismissed special leave petition [see, (1985) 155 ITR (St.) 5] against the Madras High Court decision in *CIT v Express Newspapers Ltd* [(1980) 124 ITR 117 (Mad)].”.

Page 756: section 24(1)(vi):

After line 7 from top, *add*,—

“In *CIT v Abdullahhai M. Moonim* [(1981) 132 ITR 642 (Bom)], the assessee, a co-owner, claimed deduction in respect of interest paid by him on loan raised by him individually for contributing his share towards the cost of construction of the property. The claim was upheld although the interest on a joint loan collectively taken by all the co-owners had separately been already allowed. Also see, *CIT v Abdullahhai M. Moonim*, (1984) Taxation 75(1)-27 (Bom).”.

Page 756: section 24(1)(vi):

Before the paragraph titled “*Such capital*”, *add*,—

“On the point of allowability of interest on unsecured debentures, reference may be made to *CIT v Parekh Kothi Ltd* [(1986) 160 ITR 864 (Cal)]; *CIT v Parekh Kothi Ltd* [(1987) 165 ITR 104 (Cal)].

Available even in case of tagged income.—The interest paid on borrowings utilised for purchase of house property is allowable as a deduction even though income from such property is tagged with income of other under the provisions of section 64 [*S. M. A. Siddique v CIT*, (1984) 148 ITR 307 (Mad)].”.

Page 756: section 24(1)(vi):

At the end of the page, *add*,—

“The following departmental circular is also relevant to section 24(1)(vi):—

‘Interest on house building advance—Deduction under section 24(1)(vi) of the Income-tax Act, 1961—Clarification regarding.—I am directed to say that the Board has considered the question whether interest on house building advance taken by the Central Government servants under the House Building Advance Rules of the Ministry of Works & Housing can

be allowed as deduction when the interest becomes due or when it is actually paid.

2. Under rule 6 of the House Building Rules, advances granted to Central Government servants carry interest which runs from the date of advance. The following table gives the rate of interest:—

- (a) 4½% per annum on all advances sanctioned up to October, 1963.
- (b) 5% per annum on advances sanctioned from 16th October, 1963, to 22nd June, 1965.
- (c) 5½% per annum on advances sanctioned from 23rd June, 1965, to 31st May, 1971.
- (d) 6% per annum on advances sanctioned from 1st June, 1971, to 31st March, 1974.
- (e) 6½% per annum on advances sanctioned from 1st April, 1974, to 5th August, 1975.
- (f) The following differential rates of interest on advances sanctioned on or after August, 1975:—
 - (i) 6½% per annum for the first Rs. 25,000;
 - (ii) 8% per annum for the next Rs. 25,000, viz., Rs. 25,001 to Rs. 50,000;
 - (iii) 10% per annum for the next Rs. 20,000, viz., Rs. 50,001 to Rs. 70,000.
- (g) The rates of interest on house building cases sanctioned after 1-6-1981 will be as under:—
 - (i) 7% per annum for advances up to Rs. 25,000;
 - (ii) 8½% per annum for advances between Rs. 25,001 to Rs. 50,000; and
 - (iii) 10½% per annum for the amount between Rs. 50,001 to Rs. 70,000.

3. Under rule 8A(a) the advance together with interest thereon is to be paid in full by monthly instalments within a period not exceeding 20 years. The recovery of the principal is made first in not more than 180 monthly instalments and then interest is recovered in not more than 60 instalments.

4. Under section 24(1)(vi) of the Income-tax Act, 1961, where property has been acquired or constructed with borrowed capital, a deduction in respect of the amount of interest payable on such capital is allowed in computing the income from house property. Since the word used is "payable", deduction under section 24(1)(vi) would be on the basis of accrual of interest which would start running from the date of the drawal of the advance. The interest that accrues is to be calculated annually in terms of rule 6 of the House Building Advance Rules on the balances outstanding on the last day of each month.

5. The above instructions may be brought to the notice of all the Income-tax Officers working in your charge. If any appeals are pending on

this point, they may be conceded in favour of the assessee.' [Circular No. 363, dated 24th June, 1983].”.

Page 757: section 24(1)(vii):

In line 3 from top; after “94 ITR 537, 545 (Del)”, add,—“; *Express Newspapers Pr. Ltd. v CIT*, (1984) 145 ITR 461 (Mad)” [holding that urban land tax demanded during the current year but not paid is not deductible under section 24(1)(vii)].

Page 757: section 24(1)(vii):

In line 7 from top, after “118 ITR 104 (Mad)”, add,—“; *CIT v East India Industries (M) Pr. Ltd.*, (1983) 139 ITR 1059 (Mad)” [holding that tax paid during the current year is allowable even though such tax relates to earlier years].

Page 757: section 24(1)(viii):

At the end of the paragraph titled “(viii) Collection charges”, add,—

“In *CIT v Hindustan Times Ltd.* [(1987) 62 CTR (Del) 158], the assessee paid a special commission to a third party. The same was found to be paid in order to enable the assessee to collect rent. It was, on facts, held that the commission so paid was allowable as a permissible deduction under section 24(1)(viii).”.

Page 758: section 24(1)(ix):

After line 12 from top, add,—

“On the point of allowability of vacancy allowance, reference may also be made to *Sachin Barick General Enterprises Pr. Ltd. v ITO* [(1984) 147 ITR 778 (Cal)]; *CIT v Joy P. Jacob* [(1985) 151 ITR 19 (Ker)]; *CIT v K. A. Vamana Pai* [(1986) 158 ITR 211 (Ker)].”.

Page 759: section 24:

At the end of the paragraph titled “Deductions provided for are exhaustive”, add,—

“Keeping in view the exhaustiveness of the deductions specified in section 24(1), no deduction for stamp duty and registration charges in respect of lease of the house property is available [*CIT v H. G. Gupta & Sons*, (1984) 149 ITR 253 (Del)].”.

Page 760: new section 25A:

After line 8 from top, add,—

“Section 25A, relating to special provision for cases where unrealised rent allowed as deduction is subsequently realised, has been inserted by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st April, 1985. For the effect of section 25A, see page ‘I’ of Vol. 4”.

Page 761: section 26:

At the end of line 18 from bottom, add,—“*Cf. CGT v Aleixo P. Velho*, (1983) 143 ITR 372 (Bom).”.

Page 762: section 26:

After line 2 from top, *add*,—

“The question whether two or more persons should be assessed as an association of persons or separately under section 26 should be decided by the Income-tax Officer concerned and not by the High Court in exercise of its writ jurisdiction [*Smt. Sadhana Agrawal v ITO*, (1984) 39 CTR (MP) 61].

Where it is found that a property is jointly owned by two individuals in equal shares, each of the individuals must be assessed separately under section 26. An assessment in the status of association of persons is invalid [*Gora Chand Sen v CIT*, (1985) 154 ITR 435 (Cal)]. Also see, *CIT v Phabiomal & Sons*, (1986) 158 ITR 773 (AP).”.

Page 762: section 26:

At the end of paragraph titled “*Each co-owner separately entitled to concessional tax treatment of section 23(2)*”, *add*,—“Also see, *CIT v Smt. Shanti Devi Jalan*, (1983) 139 ITR 152 (Cal); *Tulsidas Kilachand v CIT*, (1987) 63 CTR (Bom) 324.”.

Page 765: section 26:

At the end of paragraph titled “*Question of fact or of law*”, *add*,—“Also see, *CIT v Parsuram Ghanshyam Das*, (1985) 154 ITR 329 (Gauh).”.

Page 765: section 27(i):

At the end of the page, *add*,—

“The provisions of section 27(i) are to apply to assessment year 1962-63 onwards. These have no application to an assessment year prior to 1962-63 [*CIT v Mrs. Ayodhyakumari*, (1985) 154 ITR 604 (Raj)].”.

Page 766: section 27:

Deemed owner is also owner.—See, at pages 6024-6026, *ante*.

Pages 768-770: section 28:

On the “*Concept of business*”, reference may also be made to *Bharat Development Pr. Ltd. v CIT* [(1982) 133 ITR 470 (Del)]; *CIT v Khairagarh Timber Traders* [(1982) 137 ITR 346 (MP)]; *CIT v Bharat Insurance Co. Ltd* [(1983) 142 ITR 342 (Del)].

Page 774: section 28:

After serial No. (19), dealing with cases where it was held that a different article had come into existence, *add*,—

“(20) *CWT v Radhey Mohan Narain*, (1982) 135 ITR 372 (All) [conversion of white cloth into printed bed-spreads, scarves, garments, etc.].

(21) *CIT v Rashtriya Metal Industries Ltd.*, (1983) 142 ITR 306 (Bom) [extracting aluminium, copper, lead and zinc, etc., out of scraps of those metals].

(22) *CIT v Perfect Liners*, (1983) 142 ITR 645 (Mad) [polishing of rough castings after purchase and supplying for use as component parts of internal combustion engines].

(23) *CWT v P. T. N. Shenbagamoorthy*, (1983) 144 ITR 724 (Mad) [production of salt in salt pans].

(24) *G. A. Renderian Ltd. v CIT*, (1984) 145 ITR 387 (Cal) [blending of different qualities of tea].

(25) *CIT v R. Narayanaswami Naicker & Sons*, (1984) 149 ITR 283 (Mad) [ginning of cotton from *kapas*].

(26) *Empire Industries Ltd. v Union of India*, (1986) 162 ITR 846 (SC) [process of bleaching, dyeing and printing].

(27) *CIT v J. B. Kharwar & Sons*, (1987) 163 ITR 394 (Guj) [activity of dyeing and printing of grey cloth].

(28) *State of Gujarat v Oil & Natural Gas Commission*, (1982) 49 STC 310 (Guj) [activity from extracting the oil till purifying it and passing over to the refineries].

(29) *Govindram Chatramal v CST*, (1984) 55 STC 350 (MP) [conversion of paddy into rice and other grains into *dal*].

(30) *CST v Kaderul Sahata Dawakhana*, (1984) Tax LR 2918 (All) [mixing medicines suitable to patient].

(31) *Decan Sugar & Abkari Co. Ltd. v Addl. Secretary to Government of India*, (1987) 31 Taxman 78 (Mad) [out of the crushing process of sugarcane, the ultimate product of sugar as well as bagasse come out].”.

Page 775: section 28:

Serial No. (15): For “(1969) 24 STC (MP)”, read “(1969) 24 STC 101 (MP)”.

Page 776: section 28:

After line 2 from top, *add* the following illustrative cases where it was held that although the original commodity had undergone a degree of processing, it has not lost its original identity:—

“(19) *Assistant CTO v Sitaram Badrilal*, (1986) 26 Taxman 118 (Raj) [polishing of stones after purchase].

(20) *Reliable Rocks Builders & Suppliers v State of Karnataka*, (1982) 49 STC 110 (Karn) [process of breaking boulders into jelly].

(21) *State of Gujarat v Push Colour & Chemical Co.*, (1982) 49 STC 158 (Guj) [activity of mixing of dyes with gobar salt, soda-bi-carb and soda-ash].

(22) *Rajasthan General Trading Co. v CST*, (1983) 53 STC 101 (All) [the activity of cutting newsprint of odd size into smaller sizes]. Also see, *CST v Paper Process Works*, (1986) 62 STC 317 (Bom); *CST v Paper Process Works* (1987) Tax LR 2078 (Bom).

(23) *Universal Chemicals & Industries Pr. Ltd. v CST*, (1986) 62 STC 197 (MP) [cleaning and washing with certain chemicals and cutting into pieces of waste fibre].

(24) *Standard Packaging v Union of India*, (1985) Tax LR 2538 (AP) [one kraft paper bounded with another kraft paper by employing bitumin as a bonding agent].

(25) *Brakes India Ltd. v Superintendent of Central Excise*, (1987) 31 Taxman 55 (Mad) [process of drilling and trimming or chamfering of brake lining blanks].”.

Page 776: section 28:

At the end of line 13 from top, *add*,—“The same is the case where a part of the process is done by his own labour and a part by an outside agency [*CWT v Prematabai*, (1982) 137 ITR 329 (MP); *CWT v K. Lakshmi*, (1983) 142 ITR 656 (Mad)].”.

Page 776: section 28:

In lines 22-23 from top, after “115 ITR 73 (Mad)”, *add*,—“; *CIT v Neo Pharma Pr. Ltd.*, (1982) 137 ITR 879 (Bom).”.

Page 777: section 28:

At the end of line 9 from top, *add*,—“Similarly, the activity of retreading tyres [*Addl. CIT v Kalsi Tyre Pr. Ltd.*, (1981) 131 ITR 636 (Del), special leave petition dismissed: (1983) 144 ITR (St.) 13 (SC); *CIT v Kalsi Tyres Pr. Ltd.*, (1982) 11 Taxman 79 (Del)] or the activity of pressing cotton [*CIT v Lakhtar Cotton Press Co. Pr. Ltd.*, (1983) 142 ITR 503 (Guj)] amounts to processing.”.

Page 778: section 28:

At the end of line 3 from top, *add*,—

“The processing has in one sense a wider meaning than the term ‘manufacture’. At some point, ‘processing’ and ‘manufacturing’ may merge, but where the commodity retains a substantial identity through the processing stage, it will be said to have been processed and not manufactured [*Koshy's Pr. Ltd. v CIT*, (1985) 154 ITR 53, 57 (Karn)].”.

Page 778: section 28:

On the subject “*Is profit-motive essential to constitute a ‘business’?*” reference may also be made to *Govt. Medical Store Depot v Superintendent of Taxes* [(1985) 48 CTR (SC) 359=(1986) Tax LR 2164 (SC)].

Page 781: section 28:

After line 2 from top, *add*,—

“In the facts of *All Saints Church v CIT* [(1984) 145 ITR 786 (Karn)], the activities of the church were held amounting to a vocation.”.

Page 782: section 28:

The decision in *CIT v Dr. K. George Thomas* [(1974) 97 ITR 111 (Ker)] has been affirmed in *Dr. K. George Thomas v CIT* [(1985) 156 ITR 412 (SC)] and the decision in *CIT v Dr. K. George Thomas* [(1977)

108 ITR 1024 (Ker)] has been affirmed in *Dr. K. George Thomas v CIT* [(1986) 159 ITR 851 (SC)].

Page 782: section 28:

After line 14 from top, *add*,—

“In the facts of *K. Ramaswami Gounder v CIT* [(1987) 163 ITR 94 (Mad)] the activity of the assessee as an arbitrator in industrial disputes has been held amounting to ‘occupation’.”.

Page 789: section 28:

At the end of line 9 from top, *add*,—“Also see, *DLF Housing & Construction Pr. Ltd. v CIT*, (1983) 141 ITR 806 (Del); *CIT v Paragaon Utility Financiers Pr. Ltd.*, (1985) 152 ITR 7 (Punj).

The question whether transactions of sale and purchase of shares are trading transactions or are in the nature of investment is a mixed question of law and fact [*CIT v H. Holck Larsen*, (1986) 160 ITR 67, 87 (SC). Also see, *CIT v Anurag Dalmia*, (1985) 21 Taxman 43 (Del); *CIT v Yadu Hari Dalmia*, (1985) 21 Taxman 110 (Del); *Addl. CIT v Rajasthan Co-op. Bank Ltd.*, (1987) 163 ITR 205 (Raj); *CIT v Godavari Corporation Ltd.*, (1985) 156 ITR 835 (MP)].”.

Page 795: section 28:

After serial No. 13, dealing with cases holding that the transaction in land, etc., amounted to an adventure in the nature of trade, *add*,—

- “14. *Joint Financiers Pr. Ltd. v CIT*, (1981) 132 ITR 45 (Del).
15. *Badrilal Bholaram v CIT*, (1982) 135 ITR 216 (MP).
16. *Badrilal Bholaram v CIT*, (1983) 139 ITR 217 (MP).
17. *CIT v R. Ramaiah*, (1984) 146 ITR 39 (Karn).
18. *CIT v B. Narasimha Reddy*, (1984) 150 ITR 347 (Karn).
19. *Sawandas Devram v CIT*, (1984) 150 ITR 576 (MP).
20. *Ghose Estates v CIT*, (1985) 153 ITR 673 (Cal).
21. *P. Kannan v CIT*, (1985) 154 ITR 441 (Karn).
22. *Addl. CIT v Chikkaveerayya Lingaiah*, (1987) 164 ITR 41 (Karn).
23. *Smt. Parvathi Devi v CIT*, (1987) 164 ITR 675 (AP).
24. *CIT v Smt. Minal Rameshchandra*, (1987) 167 ITR 507 (Guj).”.

Page 796: section 28:

After serial No. 27, dealing with cases holding that the transaction in land, etc., did not amount to any adventure in the nature of trade, *add*,—

- “28. *CIT v Smt. Saraswati Bai*, (1982) 137 ITR 656 (Punj).
29. *DLH Housing & Construction Pr. Ltd. v CIT*, (1983) 141 ITR 806 (Del).
30. *Shyamala Pictures Pr. Ltd. v CIT*, (1983) 142 ITR 115 (Mad).
31. *Kaur Singh v CIT*, (1983) 144 ITR 756 (Punj).

32. *CIT v Nathuram Ramnarayan Pr. Ltd.*, (1985) 151 ITR 767 (Bom).
33. *CIT v Paragaon Utility Financiers Pr. Ltd.*, (1985) 152 ITR 7 (Punj).
34. *CIT v Padma Bhandari*, (1985) 153 ITR 69 (Del).
35. *Ch. Atchaiah v CIT*, (1985) 156 ITR 78 (AP).
36. *DLF United Ltd. v CIT*, (1986) 158 ITR 342 (Del).
37. *DLF United Ltd. v CIT*, (1986) 161 ITR 709 (Del).
38. *CIT v Jolly Bros. Pr. Ltd.*, (1987) 62 CTR (Bom) 204.

Also see, *Chamundi Hotels (P.) Ltd. v CIT*, (1987) 166 ITR 683 (Karn).".

Page 797: section 28:

At the end of paragraph titled "*Time of accrual of profits in case of sale of land*", add,—"*The decision in CIT v Shah Doshi & Co [(1982) 133 ITR 23 (Guj)] has been followed in CIT v Ashaland Corpn. [(1982) 133 ITR 55 (Guj)].*".

Page 799: section 28:

In lines 3 and 4 from top, for "42 ITR 534", read "41 ITR 534".

Page 799: section 28:

At the end of line 19 from top, add,—"*Also see, CIT v British India Corporation*, (1983) 142 ITR 563 (All) [holding that a transaction entered into between a company and a third person cannot be said to be vitiated for the reason that in entering into the transaction, the company had acted in derogation of the provisions contained in its articles of association].".

Page 801: section 28:

After serial No. 34, dealing with cases where the transactions in shares were held to be adventures in the nature of trade, add,—

"35. *Bharat Development Pr. Ltd. v CIT*, (1982) 133 ITR 470 (Del).".

Page 803: section 28:

Serial No. 18: The Bombay decision has been affirmed in *CIT v H. Holck Larsen*, (1986) 160 ITR 67 (SC).

Page 804: section 28:

After serial No. 30, dealing with cases where the transactions in shares were held not to be adventures in the nature of trade, add,—

- "31. *CIT v Hindustan Industrial Agencies Pr. Ltd.*, (1982) 135 ITR 436 (Bom).
32. *GIT v Calcutta Discount Co. Pr. Ltd.*, (1986) 162 ITR 680 (Cal).".

Page 806-807: section 28:

After serial No. 18, dealing with cases on the point, whether or not the concerned transaction was an adventure in the nature of trade, *add,—*

- “19. *R. Dalmia v CIT*, (1982) 137 ITR 665 (Del), special leave petition granted by the Supreme Court: (1984) 144 ITR (St.) 15 (taking over of liability of payment to shareholders knowing that shareholders could not make claim—surplus arising held to be from an adventure in the nature of trade).
20. *CIT v Moti Chand Khajanchi*, (1987) 34 Taxman 498 (Raj) (assessee, having hobby of collecting paintings, selling them to National Museum—held transaction not to constitute an adventure in the nature of trade).”.

Page 807: section 28:

In line 7 from bottom, after “107 ITR 119 (Bom)”, *add,—*“; *Addl. CIT v Madan Lal Ahuja*, (1982) 136 ITR 640 (All)”.

Page 810: section 28:

In line 24 from top, after “69 ITR 824 (MP)”, *add,—*“; *Collis Line Pr. Ltd. v ITO*, (1982) 135 ITR 390 (Ker)” [holding that the interest on deposits was not to be treated as business income].

Page 810: section 28:

Before the paragraph titled “*Fluctuation in yield not an infallible test*”, *add,—*

“The finding that the assessee was carrying on business during the relevant accounting year is a finding of fact [*Kaushal Construction Co. v CIT*, (1985) 156 ITR 572 (MP)].

In the facts of *CIT v Bharat Insurance Co. Ltd* [(1983) 142 ITR 342 (Del)], it was found that the assessee did carry on business during the relevant previous year.

But, the question whether there was any material in support of the finding of the Tribunal that the assessee had carried on a particular business during the relevant accounting year is a question of law fit for reference [*Kishan Chandra v CIT*, (1987) 163 ITR 713 (All)].”.

Page 812: section 28:

After line 6 from top, *add,—*

“Where the determination of a question depends on the finding about the discontinuance of business, it is necessary for the authorities to give a finding that whether the discontinuance of business was a temporary suspension of the business or whether the assessee had the intention of closing the business or had already closed the business. In absence of such a finding, the determination of the question in a particular manner cannot be correctly ascertained [see, *Rajkumar Oil Mills Pr. Ltd. v CIT*, (1982) 28 CTR (MP) 48, 49].

The finding that the business was only dormant and was not actually discontinued is a finding of fact [*CIT v Shere Punjab Silk Stores*, (1981) Taxation 63(1)-37 (Del)].”.

Page 813: section 28:

After line 10 from top, *add*,—

“In *CIT v Liquidator of Ratlam Electric Supply & Wvg. Mills Co. Ltd.* [(1982) 138 ITR 184 (MP)], special leave petition dismissed by the Supreme Court: (1984) 144 ITR (St.) 51], the company went into voluntary winding up. In the course of such winding up, the company received interest on securities and income from other sources. Such interest, etc., was held taxable in the hands of the company.”.

Pages 813-814: section 28:

At the end of the paragraphs titled “*Effect of illegality on taxation of business income or loss*”, *add*,—

“Under the Income-tax Act, the authorities are not concerned only with whether the activities of the assessee are legal or illegal. An assessee may be earning income by indulging in illegal activities like smuggling. The Income-tax Authorities have got no power to stop the activity of such an assessee and the only power which they have is to levy income-tax on the income which such an assessee may be earning from even such an illegal activity [*Harinder Singh v ITO*, (1987) 166 ITR 763, 768 (All)].”.

Page 815: section 28:

In line 9 from top, after “128 ITR 600 (Cal)”, *add*,—“; *Deccan Hides & Skin Co. v CIT*, (1983) 142 ITR 175 (Bom); *CIT v Motipur Sugar Factory Pr. Ltd.*, (1985) 154 ITR 259 (Pat); *Malwa Vanaspati & Chemical Co. Ltd. v CIT*, (1985) 154 ITR 675 (MP); *Tata Robins Frazer Ltd. v CIT*, (1987) 165 ITR 347 (Pat); *CIT v Spunpipe and Construction Co. (Baroda) Pr. Ltd.*, (1983) 141 ITR 246 (Guj), special leave petition granted by the Supreme Court: (1984) 150 ITR (St.) 80; *Nityananda Subudhi v CIT*, (1987) 31 Taxman 74 (Ori); *Sirsa Industries v CIT*, (1984) 147 ITR 238 (Punj)” [on the subject of nature of sales tax collections].

Page 815: section 28:

In line 19 from top, after “82 ITR 363 (SC)”, *add*,—“; *CIT v Kisandas Goverdhandas Dave & Co.*, (1983) 144 ITR 624 (Bom); *CIT v Amabati Venkanna & Co.*, (1985) 153 ITR 643 (AP); *CIT v Indian Textile Paper Tube Co. Ltd.*, (1985) 153 ITR 585 (Mad)” [now, section 43B may be seen].

Page 815: section 28:

Before the paragraph titled “*Purchase tax*”, *add*,—

“In the facts of *CIT v Devatha Chandraiah & Sons* [(1985) 154 ITR

893 (AP)], the receipt of sales tax by the assessee was held to be received in a fiduciary capacity on behalf of the principals and the same was held not to constitute trading receipts in the hands of the assessee-commission agent.

In the facts of *CIT v Assam Roller Flour Mills* [(1987) 163 ITR 186 (Raj)], the amounts collected by way of deposits against sales tax were held not to constitute trading receipts.”.

Page 816: section 28:

Before line 7 from bottom, *add*,—

“For the cases holding that *dharmada*, etc., collections did not constitute trading receipt, reference may also be made to *Nathu Ram Shiv Narain v CIT*, (1982) 134 ITR 625 (Punj); *CIT v E. H. Kathawala & Co.*, (1982) 135 ITR 384 (Bom); *Chunnilal Onkarlal v CIT*, (1982) 135 ITR 580 (MP); *CIT v Coimbatore Cotton Mills Ltd.*, (1983) 140 ITR 562 (Mad); *Vellore Radha Jayalakshmi Funds Pr. Ltd. v CIT*, (1984) 147 ITR 480 (Mad); *CIT v Sagarmal Ramautar Lal*, (1985) 151 ITR 674 (Pat); *Hari Industries v CIT*, (1985) 153 ITR 656 (Raj); *CIT v Ratilal Popatlal Shah*, (1983) 15 Taxman 434 (Bom).

Also see, *CIT v Ratilal Doongarsey & Co.*, (1987) 164 ITR 341 (Ker); *Madras Race Club v CIT*, (1985) 151 ITR 675 (Mad).”.

Page 817: section 28:

At the end of paragraph titled “*Laga receipts*”, *add*,—

“In the facts of *CIT v International Spice Co.* [(1987) 164 ITR 345 (Ker)], the laga collections were held not assessable as income.”.

Page 817: section 28:

At the end of the paragraph titled “*Other collections*”, *add*,—“The decision in *Karam Chand Thapar's* case [117 ITR 621 (Cal)] has been followed in *CIT v Karam Chand Thapar & Bros. (Coal Sales) Ltd.* [(1987) 163 ITR 40 (Cal)].

In *CIT v Saraswati Industrial Syndicate* [(1982) 136 ITR 366, 376 (Punj)], the amount collected by the assessee as penalty from such cane-growers whose supply of cane to assessee's sugar factory fell short of 85 per cent. of the quantity contracted to be supplied by them. Such collection was held to be trading receipts.

In the facts of the following cases, the amount received was held to be a trading receipt:—

(1) *Addl. CIT v U. P. State Agro Industrial Corporation*, (1982) 133 ITR 597 (All) [excess sale price realised].

(2) *Trikamlal v CIT*, (1982) 134 ITR 450 (MP) [damages recovered in respect of trading transactions].

(3) *Karamchand Thapar & Bros. (Coal Sales) Ltd. v CIT*, (1983) 140 ITR 939 (Cal) [excess freight realised from customers].

(4) *CIT v Batliboi & Co. Pr. Ltd.*, (1984) 149 ITR 604 (Bom)

[surplus deposits not refunded to customers but transferred to profit & loss account].

(5) *Kaushal Construction Co. v CIT*, (1985) 156 ITR 572 (MP).

In the facts of the following cases, the amount received was held not a trading receipt:—

(1) *CIT v M. P. State Agro Industries Development Corporation*, (1983) 139 ITR 312 (MP).

(2) *CIT v Indian Textile Engineers Pr. Ltd.*, (1983) 141 ITR 69 (Bom) [amount received by a non-resident under a subvention (aid) agreement].

(3) *CIT v Sita Ram Sri Kishan Das*, (1983) 141 ITR 685 (All) [market fee realised by commission agent].

(4) *Bengal & Assam Investors Ltd. v CIT*, (1983) 142 ITR 156 (Cal) [excess premiums collected by an insurance agent—held to be for and on behalf of the principal].

(5) *CIT v A. V. M. Ltd.*, (1984) 146 ITR 355 (Mad) [balance in the security deposit account after all adjustments].

(6) *CIT v Andhra General Finance Corporation*, (1985) 156 ITR 386 (AP) [excess amount recovered from constituents under hire purchase agreements].

(7) *CIT v Chodavaram Co-operative Sugars Ltd.*, (1987) 163 ITR 420 (AP) [excess price realised, which the assessee was obliged to repay to the constituents].

(8) *CIT v Stewarts & Lloyds of India Ltd.*, (1987) 165 ITR 416 (Cal) [amount paid by foreign holding company to the assessee subsidiary to make up for losses even though there was no contractual or statutory obligation in that regard].”.

Page 817: section 28:

After paragraph titled “*Railway claims*”, add,—

“*Collections for being passed on to Government.*—In *Kunjpura Kiln Co. v CIT* [(1982) 132 ITR 803 (Punj)], the assessee, a brick-kiln owner, collected certain amounts by way of royalty, on its sales, to be passed on to the Government under rule 20 of the Punjab Minor Mineral Concession Rules, 1964. In *Amar Singh Modi Lal v State of Haryana* [AIR 1972 Punj 356], it was held that due to procedural defect no royalty was payable by brick-kiln owners to the Government. As the collections were made in the capacity of a trader and were not refunded to the customers concerned, the same constituted a trading receipt includible in the assessee’s taxable business income. Also see, *Khattar Kiln Co. v CIT*, (1983) 140 ITR 425 (Punj).”.

Page 818: section 28:

At the end of the paragraph titled “*Mode of book entries cannot change the nature of a receipt*”, add,—

“It is the true nature and quality of the receipt and not the head under which it is entered in the account books which would prove decisive and

if a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as a trading receipt [*Khattar Kiln Co. v CIT*, (1983) 140 ITR 425, 428 (Punj)].”.

Page 822: section 28:

After line 7 from top, *add*,—

“In the facts of the following cases, the income from hiring out, etc., has been held to be business income:—

(1) *Smt. Kavir Sanghi v CIT*, (1982) 133 ITR 48 (MP) [hiring out of air-conditioning plant].

(2) *CIT v Arcust Industries Pr. Ltd.*, (1982) 133 ITR 298 (MP) [assessee, manufacturer of oil engines, leased out premises, plant and machinery after incurring loss in manufacturing business].

(3) *CIT v Rajindra Flour and Allied Industries*, (1982) 137 ITR 17 (All) [leasing out of factory for a temporary period after which the manufacturing business was resumed].

(4) *CIT v Associated Building Co. Ltd.*, (1982) 137 ITR 339 (Bom) [letting out of auditorium along with air-conditioning and other services].

(5) *CIT v Khairagarh Timber Traders*, (1982) 137 ITR 346 (MP) [leasing of forest to contractors].

(6) *CIT v Aryan Industries Pr. Ltd.*, (1982) 138 ITR 718 (AP) [leasing out oil mills for a period of 18 years].

(7) *Capital Foundry & Engineering Works v CIT*, (1982) 138 ITR 833 (Punj) [leasing out of factory premises].

(8) *CIT v B. Nagi Reddy*, (1984) 147 ITR 337 (Mad) [leasing out of cinematograph studios].

(9) *CIT v Pure Dhansar Coal Co.*, (1985) 154 ITR 857 (Pat) [leasing out of colliery to an agent to whom the management of the mine was entrusted]. Also see, *CIT v S. K. Sahana & Sons Pr. Ltd.*, (1984) 38 CTR (Pat) 273. But, see, serial No. (8) at page 6048, *post*.

(10) *CIT v Sri Venkateswara Talkies*, (1985) 155 ITR 73 (AP) [letting out of cinema theatre for a temporary period].

(11) *CIT v K. Ramaiah, K. Ramakrishna Murthy*, (1986) 159 ITR 929 (AP) [leasing out of plant, factory, etc.].

(12) *CIT v Premchand Jute Mills Ltd.*, (1987) 164 ITR 288 (Cal) [leasing out of jute mill for a period of 5 years].

(13) *CIT v Laxmi Rice Mills*, (1987) 164 ITR 571 (MP) [income from lease of rice mill and cinema theatre].

Also see, *CIT v Model Jharia Colliery Co.*, (1987) 163 ITR 565 (Pat); *CIT v Gambhir Mal Pandya*, (1987) Taxation 84(3)-111 (Raj); *Prem Trading Co. v CIT*, (1987) 166 ITR 211 (MP).

On the other hand, in the facts of the following cases, income from hiring out, etc., was held to be not business income, but income from house property:—

(1) *Narayandas Kishandutt v CIT*, (1984) 149 ITR 636 (MP) [letting out of godowns and factories].

(2) *Parekh Traders v CIT*, (1984) 150 ITR 310 (Bom); *Maharashtra Fertilisers & Chemicals v CIT*, (1984) 150 ITR 317 (Bom) [letting out of godowns].

(3) *Hindu Cotton Press Co. Ltd. v CIT*, (1986) 160 ITR 440 (Punj) [letting out of godowns].

Also see, *Chamundi Hotels (P.) Ltd. v CIT*, (1987) 166 ITR 683 (Karn).

In the facts of the following cases, the income from hiring out, etc., was held to be not business income but income from other source:—

(1) *CIT v Super Fine Cables Pr. Ltd.*, (1985) 154 ITR 532 (Del) [leasing out of factory building].

(2) *Guntur Merchants Cotton Press Co. Ltd. v CIT*, (1985) 154 ITR 861 (AP) [letting out of godowns and factory].

(3) *CIT v Kuya & Khas Kuya Colliery Co.*, (1985) 156 ITR 206 (Pat), special leave petition granted by Supreme Court: (1985) 156 ITR (St.) 159 [leasing out of business of colliery in its entirety]. Also see, *CIT v Bishwanath Roy*, (1985) 156 ITR 217 (Pat).

(4) *Bajinath Brijmohan & Sons Pr. Ltd. v CIT*, (1986) 161 ITR 234 (Bom) [income from letting out part of office premises and godowns].

(5) *Dharak Ltd. v CIT*, (1987) 163 ITR 734 (Karn) [income from letting out printing machinery and distillery plant].

(6) *CIT v Premchand Jute Mills Ltd.*, (1987) 164 ITR 288 (Cal) [income from lease whereunder the intention was to part with entire assets and realising only rental income].

(7) *CIT v Khalid Mehdi*, (1987) 165 ITR 685 (AP) [income from hiring out machinery and equipment and letting out building as cinema theatre].

(8) *CIT v S. K. Sahana & Sons Ltd.*, (1987) 33 Taxman 62 (Pat—FB), **overruling** decisions referred to in serial No. (21) at page 821 of Vol. 1 and also in serial No. (9) at page 6047, *ante* [leasing out a colliery to another appointing him as a managing contractor]. Also see, *CIT v Bishwanath Roy*, (1985) 156 ITR 217 (Pat).

The question whether income from leasing out a particular asset is business income or not is not necessarily a question of fact [*CIT v Gambhir Mal Pandya*, (1986) 57 CTR (Raj) 37=(1987) Taxation 84(3)-111 (Raj)].”.

Page 823: section 28:

After serial No. 9, dealing with the cases where the income was held from business, etc., *add*,—

“10. Interest on bank deposits made out of spare funds [*Snam Progetti S. P. A. v Addl. CIT*, (1981) 132 ITR 70 (Del)].

11. Income from services rendered by the lessor to the tenants [*CIT v Russell Properties Pr. Ltd.*, (1982) 137 ITR 473 (Cal). Also see, *CIT v V. Shanmugham*, (1984) 147 ITR 692 (Mad)].

12. Compensation received in respect of loss or damage of stock-in-trade [*Mrs. Ethyl Saxena v CIT*, (1984) 146 ITR 518 (Del), special leave petition granted by the Supreme Court: (1985) 156 ITR (St.) 161].
13. Profits realised on sale of Government securities purchased out of surplus funds [*Andhra Pradesh State Financial Corpn. Ltd. v CIT*, (1984) 150 ITR 533 (AP); *State Bank of Hyderabad v CIT*, (1985) 151 ITR 703 (AP)].
14. Devaluation gains [*Hindustan Trading Corporation v CIT*, (1986) 160 ITR 15 (Guj)].
15. Surplus realised on transfer of one of the mining leases held by the assessee [*CIT v Lakshminarayana Mining Co.*, (1987) 165 ITR 326 (Karn)].
16. Income derived by the sale of water pumped out from the mine [*State of West Bengal v Ghusick and Musha Collieries Ltd.*, (1987) 163 ITR 592 (SC)].
17. Non-refundable security deposit received in pursuance of an agreement whereunder import licences were transferred, such security deposit was ultimately to be adjusted against profit margin of the assessee respecting the goods imported under such transferred licences [*Neroth Oil Mills Co. Ltd. v CIT*, (1987) 166 ITR 418 (Ker)].
18. Surplus received from the liquidator of a company in liquidation in respect of shares held as stock-in-trade by the assessee is chargeable as business income [*CIT v G. Rajam*, (1987) 64 CTR (Mad) 256].”.

After serial No. 4, dealing with the cases where the income was held to be not from business, etc., add,—

- “5. Interest on spare money deposited in bank [*Collis Line Pr. Ltd. v ITO*, (1982) 135 ITR 390 (Ker)].
6. Profits on sale of trees [*C. G. Thimmaiah v CIT*, (1984) 148 ITR 741 (Karn)].
7. Interest on bonds received as compensation for the nationalisation of the assessee’s banking business [*Indian Bank Ltd. v CIT*, (1985) 152 ITR 557 (Mad)].
8. Compensation on acquisition of land which came to the assessee on dissolution of an association of persons [*Ramjibhai Dahyabhai v CIT*, (1986) 158 ITR 540 (Guj)].
9. Royalty received from transferee-company during temporary suspension of business [*CIT v Jacobs*, (1986) 160 ITR 570 (Ker)].

Also see, *CIT v Bentries & Financiers Pr. Ltd* [SLP (Civil) No. 1081 of 1981: (1983) 143 ITR (St.) 62 (SC)]; *Banaras State Bank Ltd. v CIT* [SLP (Civil) Nos. 1570-71 of 1982: (1984) 449 ITR (St.) 89 (SC)]; *Travancore Electro-Chemical Industries Ltd. v CIT* [SLP (Civil) No. 15449 of 1985: (1986) 159 ITR (St.) 107 (SC)].

The question whether a particular income is to be classified under the business head or other sources head is one of law [*CIT v Water & Power Development Consultancy Services (India) Ltd.*, (1987) 163 ITR 329 (Del)].

When a conclusion that the income is from business has been reached by the Tribunal on the appreciation of a number of fact established by evidence, the question whether the conclusion is sound or not must be determined not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their settings as a whole [*CIT v Godavari Corporation Ltd.*, (1985) 156 ITR 835 (MP)].”.

Page 824: section 28(ii):

Before the paragraph titled “*Compensation—what it connotes?*”, add,—

“The provisions similar to section 28(ii) (c) cover compensation for termination of managing agency even though such termination was found not *bona fide* [*CIT v Seksaria Sons Pr. Ltd.*, (1982) 138 ITR 419 (Bom)].

In the facts of *Indo Foreign Traders Pr. Ltd. v CIT* [(1987) 166 ITR 308 (Mad)], the compensation receivable by the assessee was held taxable under the corresponding provisions of section 10(5A) of the 1922 Act for the previous year wherein the compromise decree in that regard was passed.”.

Page 826: section 28:

In line 4 of the paragraph titled “*Management compensation*”, after “[(1980) 122 ITR 633 (Bom)]”, add,—“; *CIT v Oriental Government Security Life Assurance Co. Ltd* [(1983) 141 ITR 215 (Bom)]; *CIT v Bombay Life Assurance Co. Ltd* [(1984) Taxation 75(1)-16 (Bom)]”.

Page 828: section 28(iii):

After line 24 from top, add,—

“In the facts of *CIT v West Godavari District Rice Millers Association* [(1984) 150 ITR 394 (AP)], the amount collected by the assessee for construction of its building @50 paise per quintal of rice exported by its members was held not to represent charges for any services rendered so as to attract section 28(iii). Also see, *CIT v Darjeeling Club Ltd.*, (1985) 153 ITR 676 (Cal) [messing charges collected from members]; *CIT v South Indian Photographic & Allied Trades Association*, (1987) 166 ITR 166 (Mad) [income exempt under section 11 bars attraction of section 28(iii)].”.

Page 829: section 28(iii):

In lines 6 and 7 from top, for “*Delhi Stock Exchange Ltd. v CIT*, (1961) 41 ITR 49 (SC)”, read “*Delhi Stock Exchange Association Ltd. v CIT*, (1961) 41 ITR 495 (SC)”.

Page 829: section 28(iv):

Before line 10 from bottom, *add*,—

“In order to attract the provisions of section 28(iv), there must be a nexus between the business of the assessee and the benefit which the assessee has derived [*CIT v Bhavnagar Bone & Fertiliser Co. Ltd.*, (1987) 166 ITR 316 (Guj)].

In the facts of the following cases, the benefit, etc., was held not in the course of carrying on of assessee's business so as to attract section 28(iv):—

1. *CIT v General Electrodes & Equipments Ltd.*, (1985) 155 ITR 78 (Bom).
2. *CIT v Bhavnagar Bone & Fertiliser Co. Ltd.*, (1987) 166 ITR 316 (Guj).

In *CIT v Rajinder Kumar Rajgarhia* [(1985) 156 ITR 556 (Del)], the value of the rent-free accommodation provided to one of the partners of a firm as also electricity charges paid by the firm were claimed as business expenditure but disallowed. Thus, these suffered tax in the hands of the firm. These were again added to the income of the partner concerned as perquisite. It was held that this involves a double taxation, hence the addition was deleted in the partner's hand.”.

Pages 829-830: section 28(iv):

At the end of the paragraphs titled “*Import entitlements*”, *add*,—

“In the facts of the following cases, profits from sale of import entitlements, etc., were held to be business income:—

1. *Jeewanlal (1929) Ltd. v CIT*, (1983) 139 ITR 865 (Cal).
2. *Metal Rolling Works Pr. Ltd. v CIT*, (1983) 142 ITR 170 (Bom).
3. *Kamani Engineering Corporation Ltd. v CIT*, (1984) 150 ITR 586 (Bom).
4. *George Maijo & Co. (Vizig) v CIT*, (1986) 157 ITR 475 (Mad).
5. *CIT v Kamani Engineering Corpn. Ltd.*, (1986) 161 ITR 473 (Bom).
6. *O. K. Industries v CIT*, (1987) 163 ITR 51 (Ker).

Also see, *CIT v Madhavan Nayar*, (1983) 35 CTR (Ker) 81.”.

Page 830: section 28(iv):

Line 1 from top: Special leave petition has been granted [(1982) 135 ITR (St.) 110] against the Allahabad decision reported at 121 ITR 747 (All).

Page 830: section 28(iv):

Line 6 from bottom: The departmental circular No. 190, dated 1st March, 1976, has been reproduced at page 1574 of Vol. 2.

Pages 830-831: section 28(iv):

After the paragraphs titled “*Subsidy*”, *add*,—

“In the facts of the following cases, the subsidy or cash assistance was held to be business income:—

1. *Jeewanlal (1929) Ltd. v CIT*, (1983) 142 ITR 448 (Cal).
2. *CIT v Sahney Steel & Press Works Ltd.*, (1985) 152 ITR 39, 57 (AP).
3. *Bharat General & Textile Industries Ltd. v CIT*, (1985) 153 ITR 747 (Cal).
4. *Jamshedpur Co-operative Stores Ltd. v CIT*, (1986) 157 ITR 127 (Pat), special leave petition granted by the Supreme Court: (1986) 161 ITR (St.) 132.
5. *CIT v Malayalam Plantations Ltd.*, (1987) 168 ITR 63 (Ker).
6. *CIT v West Coast Industrial Co. Ltd.*, (1987) 168 ITR 72 (Ker).

However, any subsidy given on the basis of a particular scheme for a specified period in respect of industry situated only in backward areas has been held to be given by way of an incentive for capital investment and not by way of addition to the profits of the assessee. Such subsidy is not in the nature of a revenue receipt [*CIT v Dusad Industries*, (1986) 162 ITR 784 (MP)].”.

Page 831: section 28(iv):

At the end of paragraph titled “*Benefit flowing from a profession*”, add,—
 “Also see, *CIT v Ram Kripal Tripathi*, (1987) 163 ITR 716 (All).”.

Page 833: section 28, Expl. 2:

Before line 1 from bottom, add,—

“Where a trader carries on a regular business in spot dealings in a commodity and also indulges in speculative transactions in the same commodity, while in point of fact the business of that assessee may be regarded as an integrated business combining in itself not only spot transactions but also forward dealings, by virtue of *Explanation 2* to section 28, the speculative transactions must be separated and regarded as constituting a separate business [*Sri Ranga Vilas Ginning & Oil Mills v CIT*, (1982) 133 ITR 85 (Mad)]. Also see, *CIT v Puttaiah Seshiah & Co.*, (1984) 146 ITR 168 (AP). ”.

The question whether an assessee is carrying on a speculation business can be determined by the application of recognised tests, viz., whether the speculative transactions carried on by the assessee connote some real, substantial and systematic or organised course of activity or conduct with a set purpose. In the application of this test, it can conceivably be found that even a single or isolated transaction constitutes ‘speculation business’ [*CIT v Sri Venkateswara Rice & Oil Mills*, (1985) 154 ITR 756 (AP)].”.

Page 835: section 28:

After serial No. 3, dealing with cases where the voluntary gifts were not treated as income from business or profession, etc., add,—

“4. *CIT v Paramanand Uttamchand*, (1984) 146 ITR 430 (Mad) [Presents received by a money-lender on the occasion of *Griha-pravesham*].

5. *CIT v Dr. B. M. Sundaravadanam*, (1984) 148 ITR 333 (Mad) [Gift of land to a doctor by a patient who had already paid his professional charges].

6. *CIT v S. A. Rajamanickam*, (1984) 149 ITR 85 (Mad) [Assessee, an active member of a political party, received purse out of donations made by general public].

7. *CIT v Shri Girdharram Hariram Bhagat*, (1985) 154 ITR 10 (Guj) [Assessee, a direct descendant of a deceased saint, receiving amounts out of the offerings made at the feet of the deceased saint].

8. *CIT v Ramdeo Samadhi*, (1986) 160 ITR 179 (Raj) [Offerings at the *samadhi*].

9. *C. P. Chitrarasu v CIT*, (1986) 160 ITR 534 (Mad) [Assessee, a member of a political party, an author and a reformer, received gifts and presents from his well-wishers and friends].”.

Pages 836-837: section 28:

On the point “*Legal character of a transaction cannot be ignored*”, reference may also be made to *CIT v S. Ramal Ammal*, (1982) 135 ITR 292 (Mad); *Raghubar Narain Singh v CIT*, (1984) 147 ITR 447, 454 (Pat); *CIT v Chandan & Bharat Enterprises*, (1985) 151 ITR 441 (Bom).

It may be noted that observations on tax avoidance in *CIT v A. Raman & Co* [(1968) 67 ITR 11, 17 (SC)]; *CIT v B. M. Kharwar* [(1969) 72 ITR 603, 607-8 (SC)] and similar observations in other cases have been disapproved by a larger Bench of the Supreme Court in *McDowell & Co. Ltd. v CTO* [(1985) 154 ITR 148, 159, 160 (SC)]. The latter case has been relied on in *Workmen v Associated Rubber Industries Ltd* [(1986) 157 ITR 77 (SC)].

Page 837: section 28:

After line 15 from top, *add*,—

“Genuine agreements cannot be disregarded.—The Income-tax authorities have to interpret a commercial agreement on its own terms as contained in the document. It is only if and when there is solid material to hold a taint of collusion or shamness or unguineness, etc., that the Income-tax authorities may disregard the terms of the agreement and to decide the matter on the basis of the totality of the circumstances [see, *D. S. Bist & Sons v CIT*, (1984) 149 ITR 276 (Del)].

Commercial profits, and not theoretical profits, taxable.—What is assessable to tax in a business are not profits considered from a theoretical, academic or legalistic sense, but commercial profits, *i.e.*, profits which are made in a business by the carrying on of the business which a commercial man would accept as profits of that business [*CIT v U. B. S. Publishers & Distributors*, (1984) 147 ITR 114, 118 (All)].”.

Page 839: section 28:

Lines 9 and 8 from bottom: In *CIT v K. A. Patch* [(1986) 159 ITR 940 (SC)], a special leave petition has been dismissed against the Bombay High Court decision in *CIT v K. A. Patch* [(1977) 81 ITR 413 (Bom)] without expressing any opinion on the merits, in view of the extremely petty amount involved.

Page 840: section 28:

After line 22 from top, *add*,—

“Rules 9A and 9B have subsequently been amended by the Income-tax (Second Amendment) Rules, 1986, with effect from 2nd April, 1986, *i.e.*, for and from assessment year 1987-88. For the text of the amended rules 9A and 9B, see, pages 5457 to 5467 of Vol. 6.”.

Page 847: section 28:

Before line 16 from bottom, *add*,—

“In *CIT v N. T. Ramarao (HUF)* [(1987) 163 ITR 453 (AP)], circular No. 30, dated 4th October, 1969 [serial No. III at pages 844-45] has been held applicable also to assessment year 1972-73. Circular No. 92, dated 18th September, 1972 [serial No. II at pages 843-44] has been held not applicable to assessment year 1972-73. Also see, *CIT v Jyothi Pictures*, (1987) 34 Taxman 395 (AP).

In the facts of *CIT v Sankarapandia Asari & Sons* [(1987) 165 ITR 616 (Mad)], the method about amortisation of the value of distribution rights adopted by the assessee was held proper inspite of the *ad hoc* direction of the Board given in the circular.”.

Pages 852-853: section 28:

Paragraph 11 of the departmental circular No. 21 of 1969, dated 9th July, 1969, has been withdrawn by a subsequent departmental circular No. 382, dated 4th May, 1984 [(1985) 153 ITR (St.) 3-4] with immediate effect.

Page 855: section 28:

At the end of the page, *add*,—

“(17) *Distributing dividend in kind*.—In *CIT v Bharat Nidhi Ltd.* [(1984) 149 ITR 245 (Del)], the assessee-company distributed dividend in the shape of shares in other companies held by it as stock-in-trade, taking their respective book value for that purpose. It was held that the difference between the market value and the book value of these shares could not be treated as assessable business profits of the company as no trading activity was involved in such distribution.”.

Page 856: section 29:

In lines 8 and 9 of the paragraph titled “*ITO's duty to allow deductions even though not claimed by the assessee*”, after “122 ITR 168 (AP—FB)”,

add,—“, special leave petition granted by the Supreme Court: (1983) 140 ITR (St.) 5; *CIT v Smt. Archana R. Dhamwatay*, (1982) 136 ITR 355, 360 (Bom); *Eastern Cold Storage Pr. Ltd. v CIT*, (1983) 139 ITR 664 (Cal); *CIT v Mattoo Worsted Spng. & Wvg. Mills*, (1983) 139 ITR 1020 (J & K); *CIT v K. N. Oil Industries*, (1983) 142 ITR 13 (MP). Also see, *Parekh Bros. v CIT*, (1984) 150 ITR 105 (Ker)”.

Page 858: section 29:

At the beginning of paragraph titled “*Taxable profits to be determined on commercial principles*”, *add,—*“Where there is no specific statutory provision for a deduction in the computation of taxable business profits, it does not mean that the item goes without any deduction at all, but the question will have to be resolved on the basis of commercial accounting principles provided they do not go against the grain of the income-tax statute or the fiscal concept of business income [*CIT v Sitalakshmi Mills Ltd.*, (1983) 141 ITR 415, 418 (Mad)].”.

Page 860: section 29:

Lines 23-24 from top: Special leave petition has been dismissed by the Supreme Court [(1984) 145 ITR (St.) 6] against Allahabad decision in *Indian Turpentine's* case [124 ITR 830 (All)].

Page 860: section 29:

Before line 11 from bottom, *add,—*

“**Loss falling under a specific head.**—Where under a specific provision of law, a loss arising from a particular transaction is to be regarded as a loss under a specific head other than business, such loss cannot be treated as a business loss for the purpose of assessment [see, *CIT v Bhandari & Co.*, (1985) 152 ITR 687 (Mad)].”.

Pages 860-861: section 29:

At the end of paragraph titled “*For allowability, the trading loss must be real and not merely notional*”, *add,—*“Also see, *CIT v Indian Overseas Bank*, (1985) 151 ITR 446 (Mad).”.

Page 861: section 29:

In line 10 from top, after “100 ITR 79 (Bom)”, *add,—*“; *Addl. CIT v Madras Radiators and Pressings*, (1984) 148 ITR 396 (Mad); *CIT v Sri Jeya Jothi & Co.*, (1987) 164 ITR 318 (Mad)” [on the point of proper year of allowance].

Page 861: section 29:

Lines 11-12 from top: The Supreme Court has granted a special leave petition [(1983) 143 ITR (St.) 65] against the Allahabad decision in *Glass Miniature's* case [130 ITR 41 (All)].

Page 863: section 29:

After serial No. (11), dealing with cases of loss through highway robbery or by theft, *add*,—

“(12) *CIT v P. V. Gore & Co.*, (1983) 143 ITR 922 (Bom) [Cash kept in a bag was being taken to home for safe custody at night—the bag fell from the scooter and was lost: *held* allowable].”.

Page 866: section 29:

At the end of serial No. (8), *add*,—“Also see, *CIT v Sassoon J. David & Co.*, (1984) 146 ITR 390 (Bom).”.

Page 866: section 29:

After serial No. (9) of illustrations about losses through embezzlement by employee or agent, *add*,—

“(10) *CIT v Parmanand Makhan Lal*, (1983) 142 ITR 800 (Pat) [Munim, who was sent with cash to outstation places for making purchases as also for making payment of outstanding dues, disappeared with cash—loss *held* allowable].”.

Pages 867-868: section 29:

At the end of paragraphs titled “*Loss of security deposit*”, *add*,—

“In *Thackers H. P. & Co. v CIT* [(1982) 134 ITR 21 (MP)], the loss incurred by the assessee on the forfeiture of the security deposit was held to be a trading loss because such security was given not for acquiring business but for the due performance of the terms of the contract.

Also see, *CIT v Kishangarh Madira Sangh*, (1987) 167 ITR 393 (Raj).”.

Page 868: section 29:

Before line 2 from bottom, *add*,—

“At the same time, unless the assessee writes off the deficiency in stock in the year of account, it cannot be treated as a loss in stock and deduction cannot be claimed to the extent of the reserve created for that purpose [*North Arcot District Co-operative Supply and Marketing Society Ltd. v CIT*, (1987) 165 ITR 623 (Mad)].”.

Page 870: section 29:

In line 5 from top, after “of some illegal activity.”, *add*,—“Thus, any loss incurred due to confiscation for infraction of law is not allowable as a trading loss [*Sri Satyanarayana Rice Mill v CIT*, (1985) 155 ITR 676 (AP). Also see, *CIT v Maddi Venkataratnam & Co. Pr. Ltd.*, (1983) 144 ITR 373 (AP)].”.

Page 870: section 29:

At the end of paragraph titled “*Losses of illegal business*”, *add*,—

“The Supreme Court decision in *CIT v Piara Singh*. [(1980) 124 ITR 40 (SC)] has been followed in *Vishnu Kumar Soni v CIT* [(1985) 155

ITR 34 (MP)]; *CIT v Ram Chander* [(1986) 159 ITR 689 (Punj)]; *C. Krishnalal Jain v CIT* [(1987) 163 ITR 747 (Karn)]. Also see, *Kanhaiya Lal v CIT*, (1983) 143 ITR 55 (All).”.

Page 870: section 29:

Before line 5 from bottom, *add*,—

“Loss due to non-realisation of advances made by a commission agent to his principal [*CIT v Abdul Razak & Co.*, (1982) 136 ITR 825 (Guj)] and loss due to non-realisation of advances made by the assessee to its subsidiaries [*CIT v Gillanders Arbuthnot & Co. Ltd.*, (1982) 138 ITR 763 (Cal)] were held to be allowable.”.

Page 872: section 29:

After serial No. (5), dealing with illustrative cases on the allowability of loss incurred as surety or guarantor, *add*,—

“(6) The assessee, who was carrying on business of production of films, leasing out cinema theatre and film finance, guaranteed payment of a loan taken by another film producer. Loss incurred as such guarantor was held allowable as business loss [*CIT v K. M. Mody*, (1983) 141 ITR 903 (Bom)].

(7) The assessee, a money-lender, furnished guarantee which was not a part of the assessee's line of business or incidental to it. Held, loss not allowable [*CIT v T. N. Krishnaswami*, (1984) 150 ITR 365 (Mad)].

(8) The assessee guaranteed a loan. It was found by the Tribunal that the guarantee furnished by the assessee was not a normal business transaction of the assessee and the same had been furnished on extra-commercial considerations. Loss due to repayment of the loan so guaranteed was held not an allowable one [*Rampooria Bros. Pr. Ltd. v CIT*, (1987) 167 ITR 859 (Cal)].”.

Page 872: section 29:

At the end of the paragraphs titled “*Loss by devaluation*”, *add*,—“The said Punjab decision [127 ITR 608 (Punj)] has been followed in *Groz-Beckert Saboo Ltd. v CIT* [(1986) 160 ITR 743 (Punj)].

In the facts of the following cases, loss due to devaluation was held to be allowable as business loss:—

(1) *CIT v Samuel Osborn (India) Ltd.*, (1982) 135 ITR 699 (Cal).

(2) *Oil India Co. Ltd. v CIT*, (1982) 137 ITR 156 (Cal).

(3) *CIT v International Combustion (I) Pr. Ltd.*, (1982) 137 ITR 184 (Cal).

(4) *Davidson of India Pr. Ltd. v CIT*, (1983) 140 ITR 344 (Cal).

(5) *CIT v Vitre Engineering Co.*, (1984) 150 ITR 183 (Bom).

(6) *CIT v IBM World Trade Corporation*, (1986) 161 ITR 673 (Bom).

(7) *CIT v Lloyd's Register of Shipping 'Kripānidhi'*, (1983) 15 Taxman 210 (Bom).

On the other hand, in the facts of the following cases, the loss claimed due to devaluation was held not allowable:—

(1) *Namdang Tea Co. Ltd. v CIT*, (1982) 138 ITR 326 (Cal).

(2) *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 678 (Cal).

In the facts of *CIT v Invest Import* [(1982) 137 ITR 310 (Cal)], the loss due to devaluation was held not incurred in the relevant previous year.

Also see, *CIT v U. B. S. Publishers & Distributors*, (1984) 147 ITR 114 (All)."

Page 873: section 29:

After serial No. 15, dealing with cases where the loss on sale of shares, etc., was, on facts, held to be trading loss, *add*,—

"16. *CIT v Bharat Luxmi Co. Ltd.*, (1983) 142 ITR 624 (Cal).

17. *Patnaik & Co. Ltd. v CIT*, (1986) 161 ITR 365 (SC), reversing *CIT v Patnaik & Co. Pr. Ltd.*, (1979) 117 ITR 388 (Ori).

18. *CIT v B. D. Goenka*, (1984) 17 Taxman 350 (Mad)."

Page 874: section 29:

Serial No. 10: The decision in *CIT v Patnaik & Co. Pr. Ltd* [(1979) 117 ITR 388 (Ori)] has been reversed in *Patnaik & Co. Ltd. v CIT* [(1986) 161 ITR 365 (SC)].

Page 874: section 29:

After serial No. 12, dealing with cases where the loss on sale of shares, etc., was, on facts, held to be capital loss, *add*,—

"13. *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1981) 132 ITR 666 (All).

14. *CIT v B. M. Bhandari*, (1984) 145 ITR 312 (AP).

15. *CIT v M. Ramaswamy*, (1985) 151 ITR 122 (Mad).

16. *South Asia Industries Pr. Ltd. v CIT*, (1985) 155 ITR 392 (Del).

17. *CIT v Karam Chand Thapar & Sons Ltd.*, (1987) 166 ITR 636 (Cal).

Also see, *T. D. Kumar & Bros. Pr. Ltd. v CIT* [SLP (Civil) No. 14048 of 1983 [(1984) 146 ITR (St.) 187]]."

Page 874: section 29:

Before line 2 from bottom, *add*,—

"In the facts of *CIT v Sri Rajagopal Transports (Pvt.) Ltd.* [(1983) 144 ITR 573 (Mad)], the loss occasioned due to breach of contract was held to be one incidental to the assessee's trade and, therefore, allowable as a business loss."

Page 875: section 29:

In the last line, after "112 ITR 890 (All)", *add*,—" ; *CIT v Shaw Wallace & Co. Ltd.*, (1983) 143 ITR 207 (Cal); *CIT v Sasson J. David & Co.*, (1984) 146 ITR 390 (Bom); *Fatehchand Moonat v CIT*, (1984) 147 ITR 43 (MP)".

Page 878: section 29:

Before line 3 from bottom, *add*,—

"In the facts of the following cases, the loss was, on facts, held to be trading loss:—

(1) *CIT v Textool Co. Ltd.*, (1982) 135 ITR 200 (Mad) [premium forfeited on account of non-utilisation of import licences in their entirety].

(2) *CIT v Lakshmi Mills Co. Ltd.*, (1982) 135 ITR 203 (Mad) [loss due to forfeiture of guarantee commission].

(3) *CIT v Seshasayee Bros. Pr. Ltd.*, (1984) 146 ITR 322 (Mad) [payment made by the assessee under an agreement regarding sharing of managing agency commission to a firm after original partners in that firm ceased to be partners].

(4) *CIT v Pure Ice Cream Co.*, (1984) 147 ITR 556 (Del), special leave petition dismissed by the Supreme Court: (1984) 148 ITR (St.) 65 [loss incurred due to breach of trust by the broker through whom borrowings were made for business purposes].

(5) *CIT v Chunnilal Tak*, (1986) 160 ITR 617 (Raj) [minimum quantity of a trading commodity agreed to be lifted—shortfall agreed to lead to a sum to be paid—sum paid held business loss]. Also see, *CIT v Shakur Ahmed Gafoor Khan*, (1986) 24 Taxman 173 (Raj); *CIT v Motilal Chunnilal Bhanwarilal*, (1987) Taxation 84(3)-95 (Raj).

(6) *CIT v Sohanlal Kunwar & Sons*, (1987) 164 ITR 129 (Raj) [compensation paid by assessee for breach of contract without undertaking any business activity].

(7) *CIT v Sri Jeya Jothi & Co.*, (1987) 164 ITR 318 (Mad) [loss held attributable to the money-lending business of the assessee].

Also see, *CIT v Madras Auto Services Ltd.*, (1985) 156 ITR 740 (Mad); *CIT v Deccan Sugar & Abkhari & Co. Ltd.*, (1986) 157 ITR 467 (Mad); *Macneill & Barry Ltd. v CIT*, (1986) 158 ITR 374 (Cal).

On the other hand, in the facts of the following cases, the loss was, on facts, held not to be trading loss:—

(1) *Cochin Malabar Estates & Industries Ltd. v C Ag IT*, (1982) 135 ITR 536 (Ker) [loss on sale of capital assets like old machinery, tools, etc. Also see, *Thirumbadi Rubber Co. Ltd. v C Ag IT*, (1982) 135 ITR 540 (Ker)].

(2) *CIT v Kovur Textiles & Co.*, (1982) 136 ITR 61 (AP) [loss incurred in the process of bidding for chit amount].

(3) *Gujarat Mineral Development Corporation Ltd. v CIT*, (1983) 143 ITR 822 (Guj) [loss due to washing away of a bridge built as a capital asset].

(4) *CIT v Kasturi & Sons Ltd.*, (1985) 152 ITR 748 (Mad) [loss incurred on sale of spare parts, being capital assets].

(5) *B. M. S. Pr. Ltd. v CIT*, (1985) 153 ITR 758 (Mad), special leave petition dismissed by the Supreme Court: (1986) 161 ITR (St.) 132 [assessee-company managed by two groups—one group took over the com-

pany—amount outstanding against the other group written off and claimed as a business loss—claim negatived].

(6) *Popular Kuries Ltd. v CIT*, (1986) 159 ITR 519 (Ker) [loss of a discontinued business].

(7) *Madnani Development Corporation Pr. Ltd. v CIT*, (1986) 161 ITR 165 (SC) [loss on sale of land which was purchased for implementing a filling up contract—land shown as fixed asset by assessee—loss held capital loss].

(8) *CIT v Indian Corporation Ltd.*, (1986) 162 ITR 905 (Pat) [loss incurred on sale of Government bonds which were purchased in order to oblige someone in the Government].

Also see, *Rayalaseema Mills Ltd. v CIT*, (1985) 155 ITR 19 (AP); *Maharajadhiraj Dr. Sir Kameshwar Singh of Dharbhanga v CIT*, (1987) 62 CTR (Pat) 212.”.

Page 880: section 29:

After line 2 from top, *add*,—

“In *Jayantilal Kishorilal v CIT* [(1985) 154 ITR 821 (MP)], in support of his claim about loss in country liquor business, the assessee produced a certificate issued by the excise official regarding loss. Such certificate was not disputed by the department. It was held that the certificate constituted primary evidence regarding the loss. Therefore, the assessee had discharged the initial onus to prove the loss.

In the facts of *North Arcot District Co-operative Supply & Marketing Society Ltd. v CIT* [(1987) 165 ITR 623 (Mad)], the Tribunal took the view that the assessee had not established that the loss had occurred during the accounting year. The High Court upheld that view.”.

Page 881: section 30:

After line 28 from top, *add*,—

“Where the Tribunal has found that a particular expenditure has been incurred on renewal of an asset, and not on its repair, such expenditure is not allowable under section 30(a)(i) [*Gurnarain Khanna & Sons v CIT*, (1986) 159 ITR 231 (Del)].”.

Page 881: section 30:

Before line 16 from bottom, *add*,—

“Under section 30(a)(i), a tenant is entitled to deduction of the amount spent on account of the cost of repairs to the premises when he has undertaken the cost of such repair even though the repairs may involve capital expenditure [*Instalment Supply Pr. Ltd. v CIT*, (1984) 149 ITR 52 (Del)].

In *Allied Metal Products v CIT* [(1982) 137 ITR 689 (Punj)], the assessee was a lessee. The stipulation in the lease deed was to keep the building in good condition and get it white washed at least once a year. The assessee incurred expenditure on repairs of roof and overhauling of the premises. It was held that the amount so spent on repairs was covered

by section 30(a)(i) in view of the statutory provision in section 108(m) of the Transfer of Property Act, 1882, whereunder the lessee was bound to keep, and on the termination of the lease to restore, the property in as good a condition as it was at the time when he was put in possession even though there was no specific agreement undertaking to bear the cost of repairs of the leased premises.”.

Page 889: section 31:

After line 2 from top, *add*,—

“In *CIT v Kothari Textiles Ltd.* [(1987) 33 Taxman 31 (Mad)], the performance of a foreign machinery was defective and not to the satisfaction of the assessee. For removing defect, certain spare parts were supplied by the foreign supplier free of cost. The assessee had to incur expenditure relating to import duties, forwarding and clearing charges and also erection and incidental charges. It was held that such expenditure was allowable as ‘current repairs’.”.

Page 889: section 31:

After line 24 from top, *add*,—

“In *Addl. CIT v India United Mills Ltd* [(1983) 141 ITR 399 (Bom)], the expenditure incurred on replacement of old worn out doors by fire-proof doors as per factory rules and on renewal of roof of bleaching house to get more light into the factory has been held to amount to be on ‘current repairs’.”.

Page 890: section 31:

At the end of line 14 from bottom, *add*,—“In *Addl. CIT v Dyer's Stone Lime Co. Pr. Ltd* [(1982) 136 ITR 8 (Del)], the expenditure incurred on replacement of red bricks by fire bricks or refractory bricks because of the shortage of red bricks has been held to be ‘current repairs’.”.

Page 891: section 31:

After line 12 from top, *add*,—

“According to the Rajasthan High Court, expenditure on extensive repairs cannot be termed as on ‘current repairs’ [*CIT v S. Zoraster & Co.*, (1982) 133 ITR 559 (Raj)].

Similarly, in *CIT v Noroth Oil Mills Co. Ltd* [(1983) 140 ITR 173 (Ker), special leave petition granted by the Supreme Court: (1985) 151 ITR (St.) 14], a fishing boat was fitted with a 60 H. P. engine in place of a 40 H. P. engine. It was held that the expenditure incurred on replacement could not be allowed as on ‘current repairs’.”.

Page 891: section 31:

At the end of line 4 from bottom, *add*,—“In other words, the quantum of expenses is not of much assistance in ascertaining whether the repairs are of current nature or not. It is the nature of alterations, renovations,

repairs, etc., which is relevant [*CIT v Seraikella Glass Works Pr. Ltd.*, (1986) 157 ITR 584, 587 (Pat)]. In that case expenditure incurred on repairs and renovation of a furnace was held to be on 'current repairs'. Also see, *CIT v Seraikella Glass Works Pr. Ltd.*, (1986) 159 ITR 677 (Pat).".

Page 893: section 31:

At the end of line 15 from top, *add*,—"In *CIT v Salem Co-operative Spng. Mills Ltd* [(1984) 148 ITR 176 (Mad)], expenditure incurred on replacement of conventional card clothing by metallic card clothing was held to be of revenue nature and allowable as on 'repairs'.".

Page 904: section 32:

Before the paragraph titled "*Relevant rules*", *add*,—

"Section 32 has also been amended by the Finance Act, 1983 (11 of 1983). The effect of such amendments has been explained in a portion of circular No. 372, dated 8th December, 1983, which has been reproduced at pages li-iii of Vol. 4. Section 32 has further been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), which has made sweeping changes. The scope and effect of these latter amendments to section 32 and other allied provisions have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under:—

'(iii) *New provisions for allowing depreciation in respect of blocks of assets.*—6.1 In his Budget Speech for the year 1986-87, the Finance Minister had announced as under:

"96. As promised in the Long-term Fiscal Policy Statement, I propose to introduce a system of allowing depreciation in respect of blocks of assets instead of the present system of depreciation on individual assets. Simultaneously, I propose to rationalise the rate structure by reducing the number of rates as also by providing for depreciation at higher rates so as to ensure that more than 80 per cent. of the cost of the plant and machinery is written off in a period of 4 years or less. This will render replacement easier and help modernisation. Apart from those items which are eligible for 100 per cent. depreciation in the initial year itself, there are at present different rates for plant and machinery. I propose to have only two rates of depreciation at 33-1/3 per cent. and 50 per cent. Plant and machinery used as anti-pollution devices and those using indigenous know-how are proposed to be placed in a block carrying the higher rate of depreciation of 50 per cent. Buildings meant for low-paid employees of industrial undertakings will be entitled to depreciation at 20 per cent. as against the general rate of 5 per cent. for residential buildings and 10 per cent. for non-residential buildings.".

6.2 Pursuant to the above announcement, amendments have been made to sections 2, 32, 32A, 34, 35, 38, 41, 43, 50, 55, 57, 59 and 155 of the Income-tax Act.

6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para. 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the assessing officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture.

6.4 *The amendments relating to depreciation allowance are as follows:—*

- (a) A "block of assets" as defined in the new clause (11) inserted in section 2 of the Income-tax Act means a group of assets falling within a class of assets being buildings, machinery, plant and furniture in respect of which the same percentage of depreciation is prescribed. The necessary amendments to the Income-tax Rules prescribing the percentage of depreciation in regard to various blocks of assets will be made† accordingly which will be effective from 2-4-1987, *i.e.*, for the assessment year 1988-89 and onwards. It is proposed that the assets which are eligible for 100 per cent. depreciation in the initial year itself will continue to get this benefit. In addition, there will be only two rates of depreciation presently proposed at 33-1/3 per cent. and 50 per cent. in respect of plant and machinery. Further, the buildings meant for low-paid employees of industrial undertakings will be entitled to depreciation at 20 per cent. as against the general rate of 5 per cent. for residential buildings and 10 per cent. for non-residential buildings. In view of these accelerated rates of depreciation, the extra shift allowance being allowed to some items of plant and machinery enumerated in Appendix I to the Income-tax Rules will cease to be admissible when the new rates come into force.
- (b) Under the existing provisions of section 32(1)(i), depreciation in the case of ocean-going ships is allowed at such percentage on the actual cost thereof as may be prescribed. Since the ocean-going ships are also to be included in a block of assets, depreciation will be allowable in regard to such ships not on the existing

† The Income-tax (Third Amendment) Rules, 1987, makes such prescriptions [see, (1987) 165 ITR (St.) 845-50].

straight line method but on the reducing balance method, i.e., on the written down value of the block of the plant or machinery comprising such ship. As a consequence, the provisions of section 32(1)(i) have been omitted by the Amending Act.

- (c) Section 32(1)(ii) provides that depreciation will be allowed as a prescribed percentage of the written down value of buildings, machinery, plant and furniture. The Amending Act has provided that in the case of any block of assets, depreciation will be allowable at a prescribed percentage of the written down value thereof.
- (d) The provisions of clause (iia) in sub-section (1) of section 32 had been inserted by the Finance (No. 2) Act, 1980, to provide for additional depreciation in respect of new plant or machinery installed before 1-4-1985 in certain cases. These provisions have lost their relevance as they were applicable for the limited period of the Sixth Five Year Plan. Hence, they have been omitted by the Amending Act.
- (e) The objective underlying the terminal adjustment is to ensure that the total depreciation in relation to any particular item of asset is limited to 100 per cent. This is achieved by the existing provisions of section 32(1)(iii) allowing a deduction for the shortfall in the year of sale, etc. Conversely, section 41(2) of the Income-tax Act provides for taxing in the year of sale, etc., the excess depreciation allowed in the past. Because of the introduction of the system of allowing depreciation on blocks of assets at enhanced rates, both these provisions have lost their relevance and hence they have been omitted by the Amending Act. Under the new system, the moneys payable in respect of assets sold, discarded, demolished or destroyed will be reduced from the written down value of the block.
- (f) Section 32(1)(iv) of the Income-tax Act provides for initial depreciation allowance in certain cases for one year in respect of buildings erected after 31-3-1961. Further, section 32(1)(v) of the Income-tax Act provides for initial depreciation allowance in certain other cases in respect of buildings erected after 31-3-1967. Since as per the Amending Act and Rules to be framed thereunder, depreciation allowance is proposed to be allowed on block of assets at enhanced rates, these special concessions in the form of initial depreciation allowance have been rendered unnecessary. Hence, these provisions have been omitted.
- (g) As per the existing provisions of section 32(1)(vi) of the Income-tax Act, initial depreciation allowance is admissible in respect of ship or aircraft acquired or machinery or plant installed after 31-5-1974 by certain industries for, *inter alia*, construction, manufacture or production of one or more of the articles or things specified in the Ninth Schedule. Because of the reasons given in the preceding paragraph, and in the interest of simplicity, this

provision has also been rendered unnecessary and hence it has been omitted by the Amending Act. Accordingly, the Ninth Schedule to the Income-tax Act has been omitted.

- (h) Section 32(1A) of the Income-tax Act provides for depreciation allowance in respect of any addition, renovation or extension of or improvement to a building which an assessee does not own but in respect of which he holds a lease or other right of occupancy. As a result of the switchover to the block concept, this provision has been omitted. By the newly inserted *Explanation* 1 after the second proviso to section 32(1)(iii) of the Income-tax Act, it has been provided that depreciation will be allowed in respect of such a structure or work as if it is a building owned by the assessee.
- (i) The existing sub-sections (1) and (2) of section 34 of the Income-tax Act provide that the depreciation shall be allowed only if the prescribed particulars for the purposes of clauses (i) and (ii) of section 32(1) of the Income-tax Act have been furnished in respect of the depreciable assets. Further, that the aggregate of all deductions in respect of depreciation shall not exceed the actual cost to the assessee in respect of such assets. By the Amending Act, these sub-sections have been deleted in view of the switchover to the system of allowing depreciation on blocks of assets.
- (j) The existing provisions of sub-sections (2) and (2A) of section 41 of the Income-tax Act and the *Explanation* thereunder relating to balancing charge in respect of discarded assets have been omitted. Further, the existing *Explanation* below section 41(4) of the Income-tax Act has been substituted by another *Explanation* defining the expressions "moneys payable" and "sold". The former shall include any insurance, salvage or compensation moneys payable in respect of a discarded asset. The latter expression shall include a transfer by way of exchange or a compulsory acquisition under any law but it will not include a transfer of an asset by the amalgamating company to the amalgamated company in a scheme of amalgamation.
- (k) By an amendment to *Explanation* 1 to section 43 of the Income-tax Act, it has been provided that where an asset is used for the purposes of business after it ceases to be used for scientific research related to that business, the actual cost to the assessee for depreciation purposes shall be the actual cost to the assessee as reduced by any deduction allowed under section 35(1)(iv).
- (l) By an amendment to *Explanation* 2 to section 43(1) of the Income-tax Act, it has been provided that where an asset is acquired by way of gift or inheritance, its actual cost shall be the actual cost to the previous owner as reduced in the first instance by the amount of depreciation which has been allowed on such asset

in respect of any assessment year prior to the assessment year 1988-89, *i.e.*, the year of transition to the block system. The amount so arrived at shall be further reduced by the depreciation that would have been allowable to the assessee for the assessment year 1988-89 and subsequent years, as if the asset was the only asset in the relevant block on which depreciation is allowable.

(m) The existing provisions of section 43(6) of the Income-tax Act define the expression "written down value". In this sub-section, after the proviso, a new sub-clause (c) has been inserted by the Amending Act to define the written down value in the context of the block system. In the case of a block of assets in regard to the assessment year 1988-89, being the year of transition to the system of depreciation allowance on block of assets, the written down value shall be arrived at in the following manner:—

(i) The aggregate of the written down value of all the assets falling within that block at the beginning of the previous year shall first be calculated.

(ii) The aggregate of the written down value arrived at as above, shall be increased by the actual cost of any asset falling in that block which was acquired by the assessee during the previous year.

(iii) The sum so arrived at shall be reduced by the moneys receivable by the assessee together with the amount of the scrap value in regard to any asset falling within that block which is sold, discarded, demolished or destroyed during the previous year.

(n) The written down value of any asset in relation to the assessment year 1989-90, and any subsequent assessment year shall be worked out as under in accordance with the newly inserted section 43(6)(c):—

(i) The written down value of the block of assets in the immediately preceding previous year, shall be reduced by the depreciation actually allowed in respect of the block of assets in relation to the said preceding previous year.

(ii) The sum arrived at as above shall be increased by the actual cost of any asset falling within that block which is acquired by the assessee during the previous year.

(iii) The sum so arrived at shall be reduced by the sale proceeds and other amounts receivable by the assessee in regard to any asset falling within that block which is sold, discarded, demolished or destroyed during that previous year.

(o) Under the new system, the written down value of any block of assets may be reduced to *nil* for any of the following reasons:—

- (A) The moneys receivable by the assessee in regard to the assets sold or otherwise transferred during the previous year together with the amount of scrap value may exceed the written down value at the beginning of the year as increased by the actual cost of any new asset acquired, or
- (B) All the assets in the relevant block may be transferred during the year.

Section 50 of the Income-tax Act prescribing the manner in which the cost of acquisition in the case of depreciable assets may be computed for the purposes of determining the capital gains has been substituted by new provisions by the Amending Act to take care of both the above situations. The particulars of these provisions, overriding section 2(42A) of the Income-tax Act, are as under:—

- (A) The newly substituted section 50(1) provides that in a case where any block of assets does not cease to exist but the full value of the consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the following amounts, namely:—
 - (i) expenditure incurred wholly or exclusively in connection with such transfer or transfers;
 - (ii) the written down value of the block of assets at the beginning of the previous year; and
 - (iii) the actual cost of any asset falling within the block of assets acquired during the previous year,such excess shall be deemed to be short-term capital gains.
- (B) The newly substituted section 50(2) of the Income-tax Act deals with the cases where any block of assets ceases to exist for the reason that all the assets in that block are transferred during the previous year. In such a case, the cost of acquisition of the block of assets shall be the written down value of the block at the beginning of the previous year as increased by the actual cost of any asset falling within that block acquired by the assessee during the previous year. The income from such transfer or transfers shall be deemed to be short-term capital gains.
- (C) Amendments of a consequential nature have been made to clause (1) to the *Explanation* to section 32A(2), clauses (iv) and (v) of section 35(2), clause (c) of section 35(2B), section 38(2), section 55(1), section 57(ii), sub-sections (2) and (3) and the *Explanation* to section 59 and the *Explanation* to section 155(4A) of the Income-tax Act.

6.5 The following examples illustrate as to how the amended provisions relating to allowance of depreciation will be applied:—

Example 1.—Suppose a company “X” has financial year as its accounting year and has three items of plant and machinery in respect of which

the prescribed percentage of depreciation for the assessment year 1987-88 is the general rate of fifteen per cent. Further that for the assessment year 1987-88, the written down value of these items of plant and machinery before allowing depreciation for that year was as follows:

| | Rs. |
|--------|-----------------|
| Item 1 | 1,50,000 |
| Item 2 | 2,00,000 |
| Item 3 | 3,00,000 |
| Total | <u>6,50,000</u> |

The depreciation that will be allowable in respect of these items for the assessment year 1987-88 as also the written down value of these items at the beginning of the assessment year 1988-89 will be as follows:—

| | <i>Depreciation</i> | <i>WDV at the beginning of the assessment year 1988-89</i> |
|---|---------------------|--|
| | Rs. | Rs. |
| Item 1 | 22,500.00 | 1,27,500.00 |
| Item 2 | 30,000.00 | 1,70,000.00 |
| Item 3 | 45,000.00 | 2,55,000.00 |
| Aggregate WDV at the beginning of the assessment year 1988-89 | | <u>5,52,500.00</u> |

Since the items of plant and machinery which currently qualify for depreciation at the rate of 15 per cent. are proposed to be classified into a block of assets which will be entitled to depreciation at the rate of 33-1/3 per cent. for the assessment year 1988-89 and subsequent years, in this example the aggregate written down value of the block of assets at the beginning of the previous year will be Rs. 5,52,500. Presuming that during the financial year 1987-88, the assessee sold item I for a consideration of Rs. 2,00,000 and bought a new item (item 4) falling in the same block of assets during the said financial year for a consideration of Rs. 2,50,000, the depreciation to be allowed in respect of the assessment year 1988-89 will be as follows:

| | Rs. |
|---|-----------------|
| (i) Aggregate WDV of the block at the beginning of the previous year | 5,52,500 |
| (ii) The actual cost of the new asset acquired during the previous year | 2,50,000 |
| | <u>8,02,500</u> |

| | |
|--|----------|
| (iii) <i>Less: Sale proceeds in respect of the assets sold</i> | 2,00,000 |
| | <hr/> |
| WDV of the block for the assessment year 1988-89 | 6,02,000 |
| Depreciation for the assessment year 1988-89 at 33-1/3% of Rs. 6,02,000. | 2,00,667 |
| | <hr/> |
| WDV for the assessment year 1989-90 | 4,01,333 |
| | - |

Example II.—Presuming that in the case of company 'X' referred to in Example I, for the financial year 1988-89 (assessment year 1989-90):—

- (i) Items 2 and 3 of the machinery were sold for the consideration of Rs. 5,00,000;
- (ii) expenditure wholly and exclusively relating to the sale amounted to Rs. 5,000; and
- (iii) a new item (5) falling in the same block was purchased for Rs. 25,000.

In this case, the new provisions of section 50(1) of the Income-tax Act will apply as follows:—

| | |
|---|--------------|
| | Rs. |
| WDV of the block at the beginning of the year | 4,01,333.00 |
| Add Actual cost of new assets acquired | 25,000.00 |
| | <hr/> |
| | 4,26,333.00 |
| Add Expenses incurred wholly and exclusively for sale | 5,000.00 |
| | <hr/> |
| | 4,31,333.00 |
| Sale proceeds received in regard to assets sold | 5,00,000.00 |

Hence the deemed short-term capital gain will be equal to Rs. 68,667.00 (5,00,000.00—4,31,333)

Example III.—Suppose that in the case of the company 'Y' having financial year 1988-89 as the previous year relevant to the assessment year 1989-90, the WDV of a block of assets consisting of factory buildings is Rs. 10,00,000 at the beginning of the financial year 1988-89 (*i.e.*, WDV for the financial year 1987-88 less depreciation allowed in respect of the said financial year). This company acquires a godown in May, 1988, for Rs. 2,00,000 and then sells the factory building and the godown in December for Rs. 9,00,000. If there is no asset left in the relevant block at the end of the year, the new provisions of section 50(2) of the Income-tax Act will apply as follows:

| | |
|---|-----------|
| WDV at the beginning of the year | 10,00,000 |
| Add Actual cost of new asset acquired | 2,00,000 |
| | <hr/> |
| | 12,00,000 |
| Less Sale proceeds received in respect of all the assets from that block sold during the year | 9,00,000 |
| | <hr/> |
| Loss deemed to be short-term capital loss under section 50(2) | 3,00,000 |
| | <hr/> |

6.6 The above amendments to sections 2, 32, 32A, 34, 35, 38, 41, 43, 50, 55, 57, 59 and 155 of the Income-tax Act shall come into force with effect from the 1st April, 1988, and will, accordingly, apply to the assessment year 1988-89 and subsequent years.'".

Page 904: section 32:

For the paragraph titled "*Relevant rules*", substitute,—

"**Relevant rules.**—Upto assessment year 1987-88, rules 5 and 5AA[see pages 5438-39 and 5440-41 of Vol. 6] and Part I and II of Appendix I [see pages 5551-61 of Vol. 6] to the Income-tax Rules, 1962, are relevant to section 32.

For and from assessment year 1988-89, rule 5 [see (1987) 165 ITR (St.) 345-6] and Appendix I [see, 165 ITR (St.) 346-50] to the Income-tax Rules, 1962, are relevant to the amended section 32."

Page 907: section 32:

In line 11 from bottom, after "126 ITR 347 (Mad)", add,—"*special leave petition dismissed by the Supreme Court: (1984) 147 ITR (St.) 4; CIT v Motor Industries Co. Ltd., (1986) 158 ITR 734 (Karn)*" [holding that a canteen building located within the factory premises should be regarded as a part of the factory building].

Pages 907-908: section 32:

At the end of paragraphs titled '*Factory building*', add,—

"Roads, fences and culverts within the factory compound [*Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal); *CIT v Oil India Ltd.*, (1983) 143 ITR 848 (Cal); *CIT v Sandvik Asia Ltd.*, (1983) 144 ITR 585 (Bom)] or administrative buildings, compound walls, workers gate, etc. [*CIT v Standard Motor Products of India Ltd.*, (1983) 142 ITR 877 (Mad)] or roads and fencing in factory premises [*CIT v Borosil Glass Works Ltd.*, (1986) 161 ITR 286 (Bom). Also see, *CIT v McGaw Ravindra Laboratories (India) Ltd.*, (1981) 132 ITR 401 (Guj)] do constitute factory building.

But according to the Kerala High Court in *CIT v Periyar Chemicals Ltd.* [(1987) 164 ITR 174 (Ker)], ordinarily, roads are not understood as buildings. There may, however, be exceptional roads such as a viaduct

or a like structure of a permanent character involving such a degree of construction and expenses as to be approximated to a building.

In *CIT v Cheran Transport Corporation Ltd* [(1986) 160 ITR 630 (Mad)], buildings located in bus terminus and used for parking vehicles and carrying out minor repairs were treated as workshops or factories.”.

Page 908: section 32:

After serial No. (4) under the heading “*These were held to constitute ‘building’*”, add,—

“(5) Road providing access to the race course and other buildings within the compound [*CIT v Bangalore Turf Club Ltd.*, (1984) 150 ITR 23 (Karn)].

(6) Roads, drains and culverts within the factory compound [*Oil India Ltd. v CIT*, (1986) 159 ITR 151 (Cal)].

(7) Approach road to a factory [*Kaira District Co-operative Milk Producers’ Union Ltd. v CIT*, (1986) 162 ITR 496 (Guj)].

It may be noted that according to Note 1 below the Table of rates at which depreciation is admissible, constituting part of Appendix I to the Income-tax Rules, 1962, operative for and from assessment year 1988-89, buildings include roads, bridges, culverts, wells and tube-wells.”.

Page 908: section 32:

At the end of the paragraph titled “*Part of building*”, add,—

“In *CIT v Indian Smelting and Refining Co. Ltd* [(1987) 63 CTR (Bom) 333], it has been held that the word ‘building’ would also include an addition to a building and in that view of the matter, the assessee was held entitled to initial depreciation on the cost of additional floor constructed on the existing building.”.

Page 911: section 32:

After line 8 from top, add,—

“Plant will include any article or object fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. However, in order to qualify as plant, the article must have some degree of durability. The test to be applied for such determination is: Does the article fulfil the function of a plant in the assessee’s trading activity? Is it a tool of his trade with which he carries on his business? If answer is in the affirmative, it will be a ‘plant’ [*Scientific Engineering House Pr. Ltd. v CIT*, (1986) 157 ITR 86, 96 (SC)].”.

Page 912: section 32:

At the end of footnote No. 13, add,—“The *Daphne’s* case has been overruled in *Munby v Furlong*, (1977) 2 All ER 953 (CA)=(1977) 50 TC 491 (CA). *Daphne’s* case has also been referred to at page 914, serial No. 3.”.

Page 912: section 32:

In the last line of footnote No. 19, for "126 ITR 197", read, "126 ITR 196".

Page 913: section 32:

On the point, what is, and what is not "plant", after serial No. 5, *add*,—"6. *CIT v McGaw Ravindra Laboratories (India) Ltd.*, (1981) 132 ITR 401 (Guj).".

Page 914: section 32:

At the end of serial No. 4, *add*,—"Also see, *CIT v Dev Jaimehi Ice & Cold Storage*, (1985) 156 ITR 825 (All) [holding that fibre glass used in the construction of a freezing chamber constitutes integral part of the cold storage].".

Page 914: section 32:

At the end of serial No. 17, *add*,—"Also see, *Syndicate Bank v CIT*, (1984) 150 ITR 198 (Karn).".

Page 915: section 32:

In the last line of serial No. 22, after "129 ITR 499 (Mad)", *add*,—" , special leave petition granted by the Supreme Court: (1983) 144 ITR (St.) 12; *Scientific Engineering House Pr. Ltd. v CIT*, (1986) 157 ITR 86 (SC); *Catalysts & Chemicals India (West Asia) Ltd. v CIT*, (1982) 137 ITR 110 (Ker); *Scientific Engineering House Pr. Ltd. v CIT*, (1984) 148 ITR 171 (AP); *CIT v Sudarshan Chemical Industries Pr. Ltd.*, (1986) 159 ITR 629 (Bom); *CIT v Polyformalin Pr. Ltd.*, (1986) 161 ITR 36 (Ker). Also see, *CIT v Pioneer Equipment Co. Ltd.*, SLP (Civil) No. 11402 of 1980: (1983) 142 ITR (St.) 7 (SC); *CIT v Shamsher Sterling Cable Corporation Ltd.*, SLP (Civil) Nos. 161-163 of 1981: (1983) 143 ITR (St.) 59 (SC); *CIT v Elecon Engg. Co. Ltd.*, (1987) 166 ITR 66 (SC), **affirming**, *CIT v Elecon Engg. Co. Ltd.*, (1974) 96 ITR 672 (Guj)" [holding that drawings, patterns, etc., acquired from a foreign collaborator are 'plant'].

Page 915: section 32:

In the third line of serial No. 23, after "117 ITR 68 (AP)", *add*,—" ; *CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217 (AP)".

Page 915: section 32:

After serial No. 23, dealing with cases wherein the asset was held to be plant in relation to the business carried on by the assessee concerned, *add*,—

- "24. Loose tools and implements [*CIT v Saraswati Industrial Syndicate Ltd.*, (1982) 136 ITR 366, 377-8 (Punj)].
25. Air-conditioners and electric fans installed in the office premises [*CIT v Tarun Commercial Mills Ltd.*, (1985) 151 ITR 75 (Guj)].".

Page 915: section 32:

After serial No. 6 under the heading "*These were held not to constitute 'plant'*", add,—

- "7. Roads within a factory [*CIT v McGaw Ravindra Laboratories (India) Ltd.*, (1981) 132 ITR 401 (Guj); *CIT v Sandvik Asia Ltd.*, (1983) 144 ITR 585 (Bom)] or approach roads to a factory [*Kaira District Co-operative Milk Producers' Union Ltd. v CIT*, (1986) 162 ITR 496 (Guj)]. Also see, *Indore Municipal Corporation v CIT*, (1981) 132 ITR 540 (MP), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 62. *Contra: CIT v Coromandel Fertilisers Ltd.*, (1985) 156 ITR 283 (AP), holding that the roads within the factory premises did constitute plant.
8. Building wherein machinery and plant for the manufacture of saccharine and other chemicals were installed [*R. C. Chemical Industries v CIT*, (1982) 134 ITR 330 (Del) dealing with the principle when a building may be treated as a plant]."

Page 916: section 32:

In the last line, after "103 ITR 455 (Del)", add,—"; *Addl. CIT v Hindustan Cold Storage & Refrigeration*, (1983) 15 Taxman 448 (Del); *Addl. CIT v Mercury General Corporation Pr. Ltd.*, (1982) 133 ITR 525 (Del); *CIT v Tamil Nadu Agro Industries Corporation Ltd.*, (1987) 163 ITR 61 (Mad)".

Page 917: section 32:

At the end of line 20 from top, add,—"Similarly, in *CIT v Steelcrete Pr. Ltd.* [(1983) 142 ITR 45 (Cal)], the assessee secured a Government contract. In order to execute that contract, special type of machinery was imported by the Government and payments therefor were made by the Government. Such machinery was used by the assessee and the total cost of such machinery was recovered by the Government through deduction from the assessee's bills. The assessee had shown the machinery as an asset belonging to it in its balance sheet. It was held that the assessee was the 'owner' of the machinery and was entitled to depreciation thereon.

In the facts of the following cases, the assessee was held to be the owner of the asset concerned:—

(1) *CIT v Salkia Transport Associates*, (1983) 143 ITR 39 (Cal) [buses taken on hire had to be replaced by the assessee at its own cost by new buses which were registered in the name of the original owner].

(2) *CIT v Sahani Steel & Press Works Ltd.*, (1987) 32 Taxman 96 (AP) [building purchased by the assessee and used for business purposes, although no registered deed was executed by the vendor during the relevant accounting year]. Also see, *CIT v Shahney Steel and Press Works (P.) Ltd.*, (1987) 165 ITR 399 (AP)."

Page 917: section 32:

Lines 5 and 6 of the paragraph titled "*Fractional ownership not sufficient*": The decision in *Seth Banarsi Das Gupta v CIT* [(1971) 81 ITR 170 (All)] has been affirmed in *Seth Banarsi Dass Gupta v CIT* [(1987) 166 ITR 783, 787 (SC)].

Page 917: section 32:

In lines 14 and 13 from bottom, after "127 ITR 29 (Raj)", *add,—*, special leave petition dismissed by the Supreme Court: (1983) 142 ITR (St.) 6; *Addl. CIT v Amber Corporation*, (1984) Taxation 74(3)-89 (Raj); *CIT v Royal Amber Resorts*, (1987) 61 CTR (Raj) 192".

Page 918: section 32:

After line 2 from top, *add,—*

"In *Addl. CIT v Manjeet Engineering Industries* [(1985) 154 ITR 509 (Del)], one of the partners of the assessee-firm brought in a building as contribution towards his share of capital in the firm. No registered deed was executed. The building was used for firm's business. It was held that the firm became the owner of the building and was entitled to depreciation in respect thereof."

Page 918: section 32:

At the end of line 5 from bottom, *add,—*"In the facts of *Chaganlal Automobiles v CIT* [(1985) 156 ITR 58 (Raj)], on the construction of the relevant hire purchase agreement, it was held that the assessee did not become the owner of the machinery during the relevant year because the full price of the machinery was not paid within the stipulated time."

Page 919: section 32:

Before line 6 from the bottom, *add,—*

"The above view was re-iterated by the Board in its circular dated 26th June, 1959 [see, page 1005 of Vol. 1] and its instructions issued in November, 1962, and again on 15th July, 1963. In that view of the matter, the Tribunal was held legally correct in directing the Income-tax Officer to follow such instructions [*Addl. CIT v General Industries Corporation*, (1985) 155 ITR 430 (Del)]."

Page 920: section 32:

At the end of line 3 from top, *add,—*"The provisions of section 32(1A) are confined to buildings only and do not extend to plant, machinery and furniture [*CIT v Salkia Transport Associates*, (1983) 143 ITR 39 (Cal)]. Section 32(1A) cannot be construed so as to raise a presumption that whatever the lessee has spent by way of renovation or improvement to the building taken on lease should always be regarded as a capital expenditure [*CIT v Rex Talkies*, (1984) 148 ITR 560 (Karn)].

It may be noted that section 32(1A) has been omitted, with effect from 1st April, 1988, by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986). At the same time, similar provisions have been enacted in the newly inserted *Explanation 1* to section 32(1), with effect from 1st April, 1988, by the said Act 46 of 1986.”.

Page 920: section 32:

In line 11 from top, after “117 ITR 251 (All)”, *add,—*; *CIT v Alpna Talkies*, (1983) 139 ITR 1055 (Bom)” [holding that the assessee-lessee could be treated as owner, for the duration of the lease period, of the super-structure built by him on the land taken on lease].

Page 920: section 32:

After line 11 from top, *add,—*

“In the facts of *CIT v O. P. Monga* [(1986) 162 ITR 224 (Bom)], it was held that the assessee-lessee did not become the owner of the demised property because all the terms of the lease agreement in that regard were not fulfilled during the relevant previous year.

In *Golcha Properties (P.) Ltd. v CIT* [(1987) 166 ITR 259 (Raj)], the assessee entered into an agreement with a third person, whereunder the assessee was to complete the construction of the cinema building already undertaken by the third party and which had remained incomplete for want of finances. The agreement further provided that the assessee could be entitled to manage the cinema theatre for a period of 20 years on the terms and conditions contained therein after which the entire immovable property along with the plant, machinery, etc., fitted therein would revert to the third party. The assessee claimed depreciation in respect of the cinema theatre for the assessment year 1966-67. It was held that the assessee was not entitled to depreciation under section 32(1) as that section applies only to an absolute owner.”.

Page 921: section 32:

Before the paragraph titled “*User also for unremunerative business*”, *add,—*

“For claiming depreciation, the emphasis is on the user of the depreciable asset in the business of the assessee. There must be actual, effective and real user in the commercial sense and the user must be so linked with the business that it can be said that there is an immediate nexus between the user and the business, *i.e.*, the real business of the assessee. In that view of the matter, in the case of a manufacturing business, a building cannot be said to have been used by the assessee for the purposes of its business on mere installation of machinery therein [*CIT v Suhrid Geigy Ltd.*, (1982) 133 ITR 884 (Guj)].

On the point of user of the depreciable asset for the purposes of the business of the assessee, reference may also be made to *New Bank of India*

Ltd. v CIT, (1983) 140 ITR 132 (Del); *CIT v O. P. Khanna & Sons*, (1983) 140 ITR 558 (Punj); *Punjab National Bank Ltd. v CIT*, (1983) 141 ITR 886 (Del).

In the facts of *All Saints Church v CIT* [(1984) 145 ITR 786 (Karn)], the activities of the church were held amounting to a vocation and the church building was held entitled to depreciation.”.

Page 923: section 32:

Lines 15-18 from top: It may be noted that the limit of Rs. 750 in the first proviso to section 32(1)(ii) has been raised to Rs. 5,000 with effect from 1st April, 1984, i.e., for and from assessment year 1984-85. The provisions of the said first proviso were considered in *CIT v Tamil Murasu Publishers Pr. Ltd.*, (1986) 55 CTR (Mad) 447.

Page 923: section 32:

At the end of paragraphs titled “*Basis for allowance*”, add,—

“Where there is a change in the constitution of a firm and the case is covered under section 187(2)(a), the reconstituted firm continues to be the same assessable entity and is entitled to claim depreciation on depreciable assets only on the written down value thereof and not on any other value put on by the reconstituted firm [*CIT v Alagappa Cotton Mills*, (1984) 149 ITR 640 (Mad)].

In the facts of *Ugar Sugar Works Ltd. v State of Karnataka* [(1985) 155 ITR 39 (Karn)], the depreciation was held not allowable because of the absence of any evidence regarding incurring expenditure on cost of the asset concerned.

In the facts of *Saraya Engineering Works v CIT* [(1987) Taxation 84(3)-202 (All)], the assessee was held not entitled to depreciation separately because the depreciation was considered in estimating the income from the contract work undertaken by the assessee.

Assets valued in foreign currency.—Where assets are shown in foreign currency, these should be converted, as on the date of purchase, into equivalent rupee value as per the exchange rate prevailing on the date of purchase concerned. The depreciation and written down value is to be ascertained accordingly [see, *Calcutta Electric Supply Corporation Ltd. v Addl. CIT*, (1982) 136 ITR 777 (Cal)].

Law applicable.—For allowance of depreciation, the law and the rate which are prevalent on the 1st day of the assessment year are relevant [*Burrakur Coal Co. Ltd. v CIT*, (1982) 135 ITR 804 (Cal)].

No reopening if all relevant facts and figures required to be given have been given by the assessee.—Where all the material facts and figures required for the purpose have been given by the assessee, it is the duty of the Income-tax Officer to allow the correct figure of depreciation. Where,

however, there is some excess allowance through miscalculation, etc., it cannot be corrected through reassessment proceedings under section 147(a) [see, *Shree Bansidhar Spng. & Wvg. Mills Pr. Ltd. v ITO*, (1980) 125 ITR 537 (Guj)]. However, if the circumstances can attract section 154 or section 147(b); the correct allowance can be effected through such proceedings.”.

Page 925: section 32:

After line 20 from top, *add*,—

“It is pertinent to note that no initial depreciation under sections 32(1)(iv), 32(1)(v) or 32(1)(vi); no normal depreciation under section 32(1)(i) or 32(1A)(i); or no additional depreciation under section 32(1)(ia) shall be allowable, for and from assessment year 1988-89 as a result of the amendments made in that regard by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986).”.

Page 926: section 32(1)(iv):

Before line 5 from bottom, *add*,—

“Unlike the provisions of section 10(2)(vi) of the 1922 Act in relation to allowance of initial depreciation, for granting initial depreciation under section 32(1)(iv) of the 1961 Act, the date of commencement of the erection of the building concerned is not relevant. Under the 1961 Act provisions, only the date of completion of the erection of the building is material, viz., it must have been completed after 31st March, 1961 [*Addl. CIT v Indian Copper Corporation Ltd.*, (1985) 155 ITR 529 (Pat); *CIT v Indian Copper Corporation Ltd.*, (1986) 161 ITR 327, 335 (Pat)].

In *CIT v Bharat Earth Movers Ltd* [(1985) 156 ITR 269 (Karn)], the assessee claimed initial depreciation under section 32(1)(iv) in respect of the co-operative stores building, which was constructed for the benefit of the employees, on the ground that it was a canteen. It was held that the building was not a canteen and therefore no initial depreciation was allowable.”.

Page 932: section 32(1)(vi):

At the end of the page, *add*,—

“In *CIT v Senapathy Whiteley Ltd* [(1986) 158 ITR 181 (Karn)], the assessee was a manufacturer of insulation boards which were used only in electrical industry. It was held that the assessee was a manufacturer of ‘paper’ within the meaning of item 18 of Schedule IX and was eligible for initial depreciation.”.

Page 933: section 32:

At the end of paragraph titled “*Ships of foreign shipping companies employed in Indian trade*”, *add*,—

“In the facts of *CIT v East Asiatic Co. Ltd* [(1984) 148 ITR 124 (Cal)], the assessee, a non-resident, was held entitled to claim depreciation allow-

ance under rule 5 of the Income-tax Rules, 1962, even in respect of ships which had formed part of the assessee's fleet for more than 20 years. Also see, *CIT v Swedish East Asia Co. Ltd.*, (1981) 127 ITR 148 (Cal)."

Page 936: section 32:

Before the paragraph titled "*Occasion*", *add*,—

"An assessee is entitled to extra shift depreciation allowance in respect of such machinery which worked extra shift even though other machinery did not so work [*CIT v Khodiyar Pottery Works*, (1986) 158 ITR 69 (Guj), special leave petition dismissed by the Supreme Court: (1984) 150 ITR (St.) 77]. Also see, *Travancore Electro-Chemical Industries Ltd. v CIT*, S.L.P. (Civil) No. 15449 of 1985: (1986) 159 ITR (St.) 107 (SC); *South India Viscose Ltd. v CIT*, (1982) 135 ITR 206 (Mad); *CIT v South India Viscose Ltd.*, (1987) 163 ITR 674 (Mad).

In *CIT v Punalur Paper Mills Ltd* [(1987) 64 CTR (Ker) 211], the assessee was held entitled, in view of the circular of the Board bearing F. No. 10/83/63-ITA(II), dated 28th September, 1970, to extra-shift depreciation allowance in respect of entire machinery and not only in respect of such machinery which worked during the relevant previous year.

On the point of extra shift allowance, reference may also be made to *CIT v Sun-N-Sand Hotel* [SLP (Civil) Nos. 7635-7636 of 1981: (1986) 161 ITR (St.) 131]; *CIT v Phalton Sugar Works Ltd* [(1986) 162 ITR 622 (Bom)]."

Page 938: section 32:

In line 22 from top, after "(1976) Tax LR 472 (Cal)", *add*,—" ; *CIT v Saraswati Industrial Syndicate Ltd.*, (1982) 136 ITR 366, 376 (Punj)" [holding that extra shift allowance is to be allowed on the basis of the number of days for which a particular machinery has worked extra shift].

Page 939: section 32:

At the end of the paragraph titled "*V. Extra depreciation allowance for approved hotels*", *add*,—

"On the point of approval of hotels, reference may be made to circular No. 383, dated 22nd June, 1984, reproduced at (1984) 148 ITR (St.) 13-15."

Page 941: section 32:

Lines 9 and 10 from top: The Supreme Court has granted special leave petition [see, (1984) 146 ITR (St.) 184] against the Madras decision in *Sahadevan's* case [(1980) 123 ITR 820 (Mad)].

Page 942: section 32:

After line 8 from top, *add*,—

"On the point of rates of normal depreciation in respect of certain assets, reference may also be made to the following cases:—

- (1) *Addl. CIT v Distillers Trading Corporation Ltd.*, (1982) 137 ITR 894 (Del) [mineral oil concern].
- (2) *Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal) [water storage tank in an aluminium factory].
- (3) *CIT v Indian Metal & Metallurgical Corporation*, (1983) 141 ITR 40 (Mad) [partitions and false ceiling in case of a cinema theatre].
- (4) *Gujarat Small Scale Industries Corporation Ltd. v CIT*, (1983) 142 ITR 35 (Guj) [tools, dies, jigs and fixtures].
- (5) *CIT v Harayana Agro Industries*, SLP (Civil) Nos. 8492-8494 of 1980: (1983) 142 ITR (St.) 2 [motor tractors].
- (6) *CIT v Sankara Allom Pr. Ltd.*, (1984) 146 ITR 129 (Mad) [salt pans].
- (7) *CIT v Minerva Maritime Corporation*, (1985) 155 ITR 258 (Bom) [second-hand ship].
- (8) *CIT v Vasan Publications Pr. Ltd.*, (1986) 159 ITR 381 (Mad) [newspaper production plant and machinery].
- (9) *CIT v Chandra Litho Press*, (1986) 159 ITR 670 (Mad) [electrical machinery].
- (10) *Dewas Textiles Mills v CIT*, (1986) 161 ITR 72 (MP) [artificial silk manufacturing machinery].
- (11) *CIT v Bhavnagar Salt & Industries Works Pr. Ltd.*, (1987) 163 ITR 265 (Guj) [salt pans made of earth or clay].
- (12) *Addl. CIT v Farasol Ltd.*, (1987) 163 ITR 364 (Raj) [furniture in a boarding house].
- (13) *Panchaganga Sahakari Sakhar Karkhana Ltd. v CIT*, (1983) Taxation 71(1)-14 (Bom) [rollers].
- (14) *CIT v Woolcombers India Ltd.*, (1984) 41 CTR (Cal) 63 [fork lift trucks].
- (15) *CIT v Smt. Urmila Goel*, (1986) 52 CTR (Del) 278 [air-conditioner fitted in a bus].
- (16) *Shiv Construction Co. v CIT*, (1987) 165 ITR 160 (Guj) [dumpers].

Also see, circular No. 315, dated 24-9-1981 [(1981) 132 ITR (St.) 11] dealing with rate on motor vans.”.

Page 943: section 32:

Lines 5 and 6 from top: The Supreme Court has granted [see, (1984) 149 ITR (St.) 92] a special leave petition against the Bombay decision in *CIT v Bombay State Transport Corporation* [(1979) 118 ITR 399 (Bom)].

Page 947: section 32:

In the last but one line of item (ii), for “section 35(1)(ii)” read “section 33(1)(ii)”.

Page 947: section 32(1)(iii):

Before the paragraph titled "*Principle involved*", *add*,—

"No terminal allowance for and from assessment year 1988-89.—As a result of the omission of section 32(1)(iii) and section 32(1A)(ii) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, no terminal allowance is allowable for and from assessment year 1988-89 in the amended scheme for depreciation allowance."

Page 948: section 32(1)(iii):

Before the paragraph titled "*Conditions for allowance*", *add*,—

"In the facts of the following case, terminal allowance was held allowable:—

(1) *New Bank of India Ltd. v CIT*, (1983) 140 ITR 132 (Del) [loss on sale of property used for business purposes].

On the other hand, in the facts of the following case, terminal allowance was held not allowable:—

(1) *Kaira District Co-operative Milk Producers' Union Ltd. v CIT*, (1986) 162 ITR 496 (Guj) [certain assets were found missing on physical verification]."

Page 949: section 32(1)(iii):

After line 18 from top, *add*,—

"Where the business, the assets of which having been sold, is not continued during the previous year, the deficiency resulting from such sale cannot be claimed as terminal allowance under section 32(1)(iii) because in such a case the above conditions No. (1) and (2) are not fulfilled [*Tube Suppliers Ltd. v CIT*, (1985) 152 ITR 694 (Mad)].

The deduction under section 32(1)(iii) is allowable for the previous year in which the sale of the asset concerned has taken place and not for any other year as is clear from condition No. (3) [*Co-operative Tea Society Ltd. v CIT*, (1985) 154 ITR 405 (Ker)].

Condition No. (4) above is not applicable where the asset concerned was purchased second-hand because of the fact that in such a case it can be said that the asset had already been first brought into use by a person other than the assessee [*Acc Camera Equipment Pr. Ltd. v CIT*, (1984) 150 ITR 227 (Bom)]."

Page 951: section 32(1)(iii):

Before line 14 from bottom, *add*,—

"Confiscation for infraction of law does not fall within the definition of "sold" [*Cement Agencies Ltd. v CIT*, (1984) 146 ITR 136 (Bom)]."

Page 951: section 32(1)(iii):

At the end of the page, *add*,—

"On the point when compensation money becomes payable, reference may be made to *J. A. Trivedi Bros. v CIT* [(1984) 148 ITR 659 (MP)]."

Page 952: section 32(1)(iii):

In lines 20-21 from top, after "127 ITR 186 (Mad)", *add*,—"Similar is the case where the deficiency has been written off in earlier years [*CIT v East Asiatic Co. Ltd.*, (1984) 148 ITR 124 (Cal)].".

Page 953: section 32(1)(iii):

After line 14 from top, *add*,—

"Unabsorbed terminal allowance can only be carried forward as a business loss.—A balancing allowance under section 32(1)(iii) cannot be carried forward as an allowance for depreciation under section 32(2). But under the mandatory provisions of section 29, the same has to be taken into account in the computation of the profits and gains of the business and if such profits and gains fall short of the allowance, then the computation would result in a negative income, that is a loss. Such loss has to be carried forward as a loss under section 72 [*CIT v American Export Isbrandtsen Lines Ltd.*, (1985) 156 ITR 360, 368 (Cal)].".

Page 958: section 32(2):

At the end of paragraph titled "*Unabsorbed development rebate and unabsorbed depreciation—precedence for set off*", *add*,—

"The above paragraph has been quoted with approval in *Calicut Modern Spng. & Wvg. Mills Ltd. v CIT* [(1985) 153 ITR 810, 817 (Ker)]. Also see, *Addl. CIT v Indo-Austro Corporation Pr. Ltd.*, (1984) 149 ITR 329 (Del); *Bihar State Industrial Development Corporation Ltd. v CIT*, (1987) 165 ITR 671 (Pat); *Utkal Machinery Ltd. v CIT*, (1987) 167 ITR 119 (Ori).".

Pages 958-960: section 32(2):

After line 6 from top of page 960, *add*,—

"The decision of the Allahabad High Court in *Mother India's* case [(1971) 80 ITR 510 (All)] has been reversed by the Supreme Court in *CIT v Mother India Refrigeration Industries Pr. Ltd* [(1985) 155 ITR 711 (SC)] which held that in computing the profits and gains of a business for the current year, current depreciation must be deducted first before deducting the unabsorbed carried forward business losses of earlier years. Thus, the unabsorbed business losses carried forward from earlier years cannot have precedence over the current depreciation. In so holding, the Supreme Court has approved the decisions in *Aluminium Corporation of India Ltd. v CIT* [(1958) 33 ITR 367 (Cal)]; *CIT v Malwa Sugar Mills Co. Ltd* [(1982) 134 ITR 56 (Cal)]; *CIT v Gujarat State Warehousing Corporation* [(1976) 104 ITR 1 (Guj)] and *Addl. CIT v Andhra Printers Ltd* [(1979) 117 ITR 555 (AP)]. Also see, *Vegetable Oil Mfg. Co. Pr. Ltd. v CIT*, (1984) 147 ITR 544 (Bom); *CIT v Candy Filters Pr. Ltd.*, S.L.P. (Civil) No. 7741 of 1981: (1984) 148 ITR (St.) 1 (SC).".

Page 960: section 32(2):

At the end of the paragraph titled "*Existence of the 'same business', whether essential?*", add,—

"In other words, section 32(2) contains an independent provision for setting off unabsorbed depreciation carried forward from a preceding year. The deeming provision in that section has to be given full effect for all purposes of the Act. Hence, it is not necessary that the business in respect of which depreciation was originally allowed and carried forward should remain in existence in the succeeding year when the set off is claimed [*CIT v Kishanlal & Sons (Udyog) Pr. Ltd.*, (1985) 154 ITR 735 (Cal)]. Also see, *Hyderabad Construction Co. Ltd. v CIT*, (1981) 129 ITR 81 (AP), special leave petition granted by the Supreme Court: (1983) 143 ITR (St.) 67].

On the other hand, it has also been held that for claiming set off of unabsorbed depreciation in a succeeding year, the continuance of the business in relation to which such depreciation related is an essential pre-requisite [*Tube Suppliers Ltd. v CIT*, (1985) 152 ITR 694 (Mad)]. Also see, *Hindustan Chemical Works Ltd. v CIT*, (1980) 124 ITR 561 (Bom); *East Asiatic Co. (India) Pr. Ltd. v CIT*, (1986) 161 ITR 135 (Mad)].".

Page 960: section 32(2):

In lines 5 and 6 of the paragraph titled "*User of the concerned asset, whether essential?*", after "129 ITR 81 (AP)", add,—", special leave petition has been granted by the Supreme Court: (1983) 143 ITR (St.) 67".

Page 961: section 32(2):

In line 19 from top, after "[129 ITR 458 (Karn)].", add,—"*Also see, Eastern Cold Storage Pr. Ltd. v CIT*, (1983) 139 ITR 664 (Cal), holding that unabsorbed depreciation can be set off against the balancing charge taxable under section 41(2). But, however, in *East Asiatic Co. (India) Pr. Ltd. v CIT* [(1986) 161 ITR 135 (Mad)], it has been held that unabsorbed depreciation carried forward from earlier year cannot be set off, *inter alia*, against section 41(2) profits if original business was not continued in the year of claim. .

In *CIT v Premchand Jute Mills Ltd* [(1987) 164 ITR 288 (Cal)], the assessee was held entitled to set off the unabsorbed depreciation pertaining to the assets of the business carried on in earlier years against income from letting out such assets even though such income was assessable as 'Income from other sources'.

Page 962: section 32(2):

In line 7 from top, after "75 ITR 1, 5, 6 (Del)].", add,—"*It may be noted that the observations in that regard in Raj Narain's case [75 ITR 1] have been held to be obiter in CIT v J. Patel & Co [(1984) 149 ITR 682 (Del)].*".

Further cases supporting the former view (reverts to the firm) are:

CIT v Nagpur Gas & Domestic Appliances [(1984) 147 ITR 440 ((Bom))];
CIT v J. Patel & Co [(1984) 149 ITR 682 (Del)].

On the other hand, the later view (no reversion possible) finds support in *Garden Silk Wvg. Factory v CIT* [(1983) 144 ITR 613 (Guj)]; *Sankaranarayana Construction Co. v CIT* [(1984) 145 ITR 467 (Karn)].

It may be noted that the Supreme Court has granted [see, (1983) 141 ITR (St.) 51] special leave petition against the Gauhati decision in *CIT v Singh Transport Co* [(1980) 123 ITR 698 (Gauh)].

In *N. Krishnammal v CIT* [(1984) 147 ITR 431 (Mad)], it was found that the firm was dissolved in the year 1970 while the unabsorbed depreciation of the firm for the assessment years 1967-68 and 1968-69 was allocated to the partners including the assessee. The claim of the assessee to have his allocated share set off against his income for assessment year 1971-72 was upheld by the High Court in view of the fact that there was no possibility of the set off in the hands of the firm.”.

Page 962: section 32(2):

Lines 14-15 of the paragraph titled “*Unabsorbed depreciation of an unregistered firm*”: The Allahabad decision in *J. K. Hosiery Factory v CIT* [(1973) 92 ITR 16 (All)] has been affirmed by the Supreme Court in *CIT v J. K. Hosiery Factory* [(1986) 159 ITR 85 (SC)].

Page 963: section 32(2):

After the paragraph titled “*Unabsorbed depreciation of a non-resident*”, add,—

“**Set off possible only against Indian income.**—Unabsorbed depreciation in relation to a business in India is to be set off against Indian income and not against, say, Pakistan income [*Ganesh Flour Mills Co. Ltd.*, (1985) 156 ITR 179 (Del)].”.

Page 963: section 32(2):

At the end of paragraph titled “*Overriding provisions of section 79 do not affect the set off of unabsorbed depreciation or unabsorbed development rebate*”, add,—“Also see, *CIT v Kalpaka Enterprises Pr. Ltd.*, (1986) 157 ITR 658 (Ker).”

Page 965:

Before the text of section 32A, add,—

“It may be noted that incentives provided for in the above sections have, subsequently, suffered amendments or omissions. These are reflected in the appropriate sections.”.

Page 982: section 32A:

Before the paragraph titled “*Introduction*”, add,—

“Section 32A has also been amended by—

—the Finance Act, 1982 (14 of 1982)†;

- the Finance Act, 1983 (11 of 1983)†;
- the Finance Act, 1986 (23 of 1986);
- the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986);
- the Finance Act, 1987 (11 of 1987).

The effect of the amendments made by Acts marked† has been discussed at pages lii-liv of Vol. 4.

The scope and effect of the amendments made in section 32A by the Finance Act, 1986, have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘(vi) Modification of the definition of “small scale industrial undertaking”.—15.1 Section 32A(2)(b)(ii) of the Income-tax Act provides that investment allowance is admissible in respect of any machinery or plant installed in a small scale industrial undertaking for the purposes of business of manufacture or production of any article or thing, including an article or thing specified in the Eleventh Schedule of the Income-tax Act. An assessee which does not fall under the category of small scale industrial undertaking is denied the benefit of investment allowance if it is engaged in the manufacture or production of an article or thing listed in the Eleventh Schedule. Further, under section 80HHA of the Income-tax Act, an assessee is entitled to a deduction in the computation of his taxable income of an amount equal to 20 per cent. of the profits and gains derived from a small scale industrial undertaking set up in a rural area for ten initial assessment years. Under section 80-I of the Income-tax Act, an assessee owning a small scale industrial undertaking is entitled to a deduction in the computation of his taxable income of an amount equal to 20 per cent. of the profits and gains (25 per cent. in the case of a company) derived from a small scale industrial undertaking which may be engaged in the manufacture or production of any article or thing, including an article or thing of low priority specified in the Eleventh Schedule to the Income-tax Act for eight initial assessment years (10 years in the case of a co-operative society).

15.2 For the purposes of the above mentioned tax concessions, a “small scale industrial undertaking” has been defined as an industrial undertaking in which the aggregate value of the machinery and plant installed, as on the last day of the previous year, does not exceed Rs. 20 lakhs. With a view to promoting the growth of the small scale sector, the limit of investment in a small scale industrial undertaking was increased from Rs. 20 lakhs to Rs. 35 lakhs by the Department of Industrial Development, *vide* their Notification dated 18th March, 1985. In view of the increase in the aforesaid qualifying monetary limit, the Finance Act, 1986, has amended sections 32A and 80HHA of the Income-tax Act to provide that an industrial undertaking will be regarded as a small scale industrial undertaking if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed therein, as on the last day of any previous year

ending after the 17th March, 1985, does not exceed Rs. 35 lakhs. In view of the *Explanation* 3 to section 80-I(2), the amended definition will automatically apply for the purposes of that section also.

15.3 This amendment will have retrospective effect and will apply in relation to the assessment year 1985-86 and subsequent years.

(vii) *Other amendments to section 32A of the Income-tax Act.*—**16.1** As one of the measures of corporate tax reform announced in the Long-Term Fiscal Policy, the scheme of investment allowance has been replaced by the scheme of investment deposit account. Under the existing provisions of clause (c) of sub-section (2) of section 32A of the Income-tax Act, in the case of approved Indian companies any new machinery or plant installed for the purposes of business of repairs to ocean-going vessels or other powered craft, is entitled to investment allowance. As per section 32A(8), the Central Government may by notification in the Official Gazette, direct that the deduction allowable under section 32A of the Act shall not be allowed in respect of any ship or aircraft acquired or any machinery or plant installed after such date, not being earlier than three years from the date of such notification, as may be specified.

16.2 Since the scheme of investment allowance is being replaced by the new scheme of investment deposit account, there has to be a consequential change in the modality of allowing deduction for encouraging investment in new plant and machinery. In order to facilitate the switch over from the old scheme, in section 32A(2)(c), for the date 1st April, 1988, the date 1st April, 1987, has been substituted by the Finance Act, 1986. Similarly, section 32A(8) has been amended to secure that the requirement of three years after which the notification for withdrawing the investment allowance shall be effective, is not necessary. The notification in this regard has been made.

16.3 By inserting a new sub-section (8B) in section 32A, it has been provided that no deduction by way of investment allowance shall be allowed in the case of an assessee who has claimed deduction allowable under the new section 32AB (relating to the new scheme of investment deposit account). However, the benefit of set off of the unabsorbed investment allowance for an earlier year will not be denied. This amendment will apply in relation to the assessment year 1987-88 and subsequent years.”.

The substitution of *Explanation* (1) of section 32A(2) by Act 46 of 1986 is consequential to the omission, by that Act, of section 32(1)(vi).

The omission of clause (b) of the *Explanation* below section 32A(2B) by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1987, is of consequential nature. By this Act, the expression “public sector company” has been defined in the newly inserted clause (36A) of section 2.”.

Page 984: section 32A:

After line 7 from top, add,—

“In *CIT v R. Narayanaswami Naicker & Sons* [(1984) 149 ITR 283

(Mad)], plant and machinery installed in a ginning factory were held entitled to investment allowance for assessment year 1977-78.

However, in the facts of *S. P. G. C. Metal Industries Pr. Ltd. v CIT* [(1985) 152 ITR 484 (Mad)], the assessee was held not a manufacturer of iron and steel (metal) within the meaning of item 1 of the Ninth Schedule. It was only a manufacturer of tin containers using iron and steel and therefore not entitled to investment allowance.

In *Mittal Ice and Cold Storage v CIT* [(1986) 159 ITR 18 (MP)], the assessee operated a cold storage. No investment allowance was held allowable in respect of machinery of the cold storage plant because no 'manufacture' was involved in operating a cold storage. Also see, *S. B. Cold Storage Industries Pr. Ltd. v CIT*, (1987) 166 ITR 646 (Cal).

Also see, *Krishna Dyeing & Finishing Mills v ITO*, SLP (Civil) Nos. 10719-10721 of 1986: (1986) 161 ITR (St.) 133 (SC)."

Page 984: section 32A:

At the end of paragraph titled "*Not allowable in respect of which assets*", add,—

"The question whether the Tribunal was right in law in holding that the tractor was not a road transport vehicle and that investment allowance was allowable is one of law [*CIT v Prakash Khandsari Udyog*, (1987) 163 ITR 710 (All)]."

Page 985: section 32A:

At the end of the paragraphs titled "*Conditions for allowance*", add,—

"In *CIT v Orient Express Co. P. Ltd* [(1987) 167 ITR 894 (Del)], the requisite Investment Allowance Reserve was created by holding a second annual general meeting of the members of the company and the accounts were duly amended so as to provide for the reserve before the assessment was completed. It was held that the condition about creation of reserve was satisfied."

Pages 986-987: section 32A:

Rule 5AA has been omitted by the Income-tax (Third Amendment) Rules, 1987, with effect from 2nd April, 1987.

Page 988: section 32A:

Before the paragraph titled "*Amalgamation and succession*", add,—

"The order of precedence has also been discussed in *Monogram Mills Co. Ltd. v CIT* [(1982) 135 ITR 122 (Guj)]. Also see, "*Unabsorbed development rebate and unabsorbed depreciation—precedence for set off*" at page 958 of Vol. 1."

Page 988: section 32A:

At the end of paragraph titled "*Power to discontinue*", add,—"*The Finance Act, 1986, has omitted the words, etc., 'not being earlier than three*

years from the date of such notification,' from section 32A(8) with effect from 1st April, 1986. As a result of such amendment, the power to discontinue can be exercised at any time.

As a matter of fact, in exercise of the power conferred by section 32A(8), the Central Government has directed that the deduction allowable under section 32A shall not be allowed in respect of any ship or aircraft acquired or any machinery or plant installed after 31st March, 1987 [*vide Notification No. 870(E), dated 12th June, 1986*].”.

Page 990: section 32A:

Before the text of section 33, *add*,—

“The following circulars are also relevant to section 32A:

1. Depreciation—Initial depreciation under section 32(1)(vi) and investment allowance under section 32A of the Income-tax Act, 1961—Definition of “small scale industrial undertaking”—Clarification regarding— Section 32A was introduced by the Finance Act, 1976, to allow investment allowance, *inter alia*, in respect of new machinery or plant installed after the 31st March, 1976, in a “small scale industrial undertaking” for the purposes of business of manufacture or production of any article or thing.

2. The term “small scale industrial undertaking” has been defined† in *Explanation (2)* to section 32A(2) as an industrial undertaking, the aggregate value of whose machinery and plant (other than tools, jigs, dies and moulds) installed as on the last day of the previous year does not exceed Rs. 10 lakhs (in cases where the previous year ends after 31-7-1980—Rs. 20 lakhs). A question has been raised whether the term “machinery & plant” used in this *Explanation* includes all machinery and plant to arrive at the monetary ceiling or whether the ceiling should be determined according to the norms laid down by the Department of Industries in this regard. According to the Department of Industries, the cost of generating sets and of extra transformers, etc., which have to be installed by the assessee as required by the State Electricity Boards will be excluded.

3. The question has been considered in consultation with the Ministry of Law. There is no express or implied legislative intendment disclosed in *Explanation (2)* to section 32A(2) read with section 43(3) of the Income-tax Act, which would permit exclusion of any items other than tools, jigs, dies and moulds from the value of plant and machinery. The norms laid down by the Department of Industries, unless legally incorporated in the Income-tax Act, cannot be invoked for the purpose of excluding additional items like generating sets, transformers, etc. All items of plant and machinery as on the last day of the relevant previous year other than tools, jigs, dies and moulds are, therefore, to be taken into consideration and their

† *Explanation (2)* has subsequently been amended by the Finance Act, 1986, with retrospective effect from 1-4-1985.

aggregate value will be computed for the purpose of ascertaining whether the assessee is a "small scale industrial undertaking".

4. The above clarification will apply, *mutatis mutandis*, in the case of "initial depreciation" under section 32(1)(vi)†. However, the definition of "small scale industrial undertaking" for the purpose of initial depreciation given in *Explanation* (3) to section 32(1)(vi) is slightly different from that given for the purpose of investment allowance inasmuch as the cost of tools, jigs, dies and moulds is not to be excluded in arriving at the monetary ceiling of the value of plant and machinery.

5. The above instructions may please be brought to the notice of all the Income-tax Officers working in your charge.' [Circular No. 314, dated 17th September, 1981.]

II. Investment allowance under section 32A—Tea companies—Creation of reserve.—Attention is invited to the provisions of section 32A of the Income-tax Act, 1961, which provide for the grant of investment allowance in respect of new machinery and plant installed, *inter alia*, for the purposes of construction, manufacture or production of articles or things not included in Schedule XI to the Income-tax Act. The allowance which is equal to 25 per cent. of the cost of the machinery and plant is permissible in the year of installation or the immediately succeeding year, if put to use in that year, if certain conditions are fulfilled. One such condition prescribed under section 32A(4)(ii) is that an amount equal to 75 per cent. of the amount to be actually allowed as investment allowance is debited to the profit and loss account of the previous year in respect of which deduction is to be allowed, and credited to a reserve account.

2. A clarification has been sought from the Board regarding the manner in which the amount to be credited to the investment allowance reserve account should be determined in the case of tea companies in whose cases only 40 per cent. of the income is liable to income-tax. A similar question was examined by the Board in the past with regard to the quantum of reserve to be created for the grant of development rebate in respect of new machinery and plant installed by tea companies. It was clarified by the Board's Circular letter F. No. 1(8)-58-PL, dated 1st November, 1958, that in the case of a tea company, it would be sufficient compliance if the tea company created a reserve equal to 75 per cent. of the amount of development rebate actually allowed in the assessment of the tea company.

3. Since the conditions regarding the creation of reserve for the grant of investment allowance under section 32A are identical to those prescribed with regard to the creation of reserve for claiming the grant of development rebate, it is clarified that the reserve required to be created for claiming

† Section 32(1)(vi) has subsequently been omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1-4-1988.

investment allowance should be calculated at 75 per cent. of the amount which is actually allowed by way of investment allowance, *i.e.*, 75 per cent. of 40 per cent. of the investment allowance debited to the profit and loss account.

4. This clarification may please be brought to the notice of all officers in your charge.' [Circular No. 324, dated 3rd February, 1982.]".

Page 990: new section 32AB:

Section 32AB has been newly inserted by the Finance Act, 1986.

Rule 5AB and Form No. 3AA which are relevant to section 32AB have been reproduced at page xxxv and pages xxxvi-xl of Vol. 6.

The scope and effect of the newly inserted section 32AB have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(viii) *Substitution of the provisions relating to investment allowance by an investment deposit account scheme.*—17.1 The 1985-86 Budget had initiated a process of reform of the corporation tax. It had been announced that the scope for further reform would be examined, along two alternative lines as under:—

- (i) A further reduction in the rate of tax by 5 per cent. for the next year and withdrawal of surcharge and surtax in the third year along with withdrawal of the investment allowance in the phased manner; or
- (ii) retention of the investment allowance with no further cut in rates.

17.2 An open debate was invited on the relative merits of these alternatives before taking any decision. On a consideration of the related issues, the surcharge on the companies has been abolished with immediate effect and it has not been postponed to the third year, as envisaged earlier as per para. 5.12 of the LTFP. Keeping in view the interest of revenue, the surtax has been discontinued with effect from the assessment year 1988-89. The scheme of investment allowance has been replaced by a new scheme of investment deposit account.

17.3 One of the reasons for our having a high capital output ratio in the industry is that the tax concessions have so far favoured investment in assets *per se* rather than output generated from those assets. By the new scheme relating to investment deposit account along with the proposed high depreciation rates† announced by the Finance Minister, the retained earnings and internal resources generation of the companies would improve. As mentioned in paras. 5.12 to 5.18 of the LTFP, the investment allowance had tended to favour the larger and more established enterprises, partly

† The high depreciation rates has been prescribed by the Income-tax (Third Amendment) Rules, 1987 [(1987) 165 ITR (St.) 345], with effect from 2-4-1987.

because such concerns could set off investment allowance against profits of old established units without waiting for profits from fresh investments. The new scheme of investment deposit account will be neutral as between small and large companies and will also insulate the timing of investment decisions from tax considerations. This measure should help to reduce the premium on spending which taxation of business profit inevitably creates, and thus curb the conspicuous extravagance in the corporate sector. The new scheme should also help to neutralise the bias in favour of borrowing and needless capacity creation.

The new scheme differs from the existing provisions of investment allowance as under:—

(a) The existing provisions of the investment allowance apply to only those assesseees—

- (i) who purchase a ship or aircraft, which is first put to use in the business of the assessee; or
- (ii) who install new machinery or plant in an industrial undertaking for the purposes only of business of construction, manufacture or production of any article or thing not specified in the Eleventh Schedule to the Income-tax Act.

In the case of small scale industrial undertaking, this benefit is not denied even if such an undertaking produces a non-priority item listed in the Eleventh Schedule, like alcoholic spirits, tobacco preparations, cosmetics, etc.

The new scheme is applicable to all existing types of assesseees as also to the professionals and the leasing companies which have not leased out machinery to those industrial undertakings, other than a small scale industrial undertaking, engaged in the manufacture or production of articles or things listed in the Eleventh Schedule to the Income-tax Act. In other words, the deduction is admissible to all the assesseees who carry on "eligible business or profession", which as per section 32AB(2) means business or profession other than the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule (in case it is not a small scale industrial undertaking) and the business of leasing or hiring of machinery or plant to an industrial undertaking other than a small scale industrial undertaking engaged in the business of low priority items as specified in the list in the Eleventh Schedule. It may be clarified that the business of construction is an eligible business for the purposes of this provision.

- (b) In order to encourage a more productive use of capital leading to a low-cost economy, the benefits under the new investment deposit scheme shall be available only if there are profits in the eligible business or profession whereas the benefit of investment allowance is available even if there is no such profit, because the deduction is linked merely to the cost of the plant and machinery.

- (c) The acquisition of a ship or an aircraft or installation of plant and machinery, as the case may be, during the previous year is a condition precedent for availing of the benefit of the existing investment allowance, whereas the deduction under the new provisions can be availed of even before the ship or aircraft is acquired or the plant or machinery has been installed by making a deposit with the designated Development Bank.
- (d) The investment allowance is allowed at 25 per cent. of the actual cost of the plant, machinery, ship or aircraft to the assessee. As against this, under the new scheme, the entire cost of the ship or aircraft or plant or machinery will qualify for deduction, if the same is up to 20 per cent. of the profits of the eligible business or profession.
- (e) Under the new provisions, the deduction is not admissible unless the accounts of the business or profession of the assessee, other than a company or a co-operative society, have been audited by an accountant and the assessee furnishes along with the return of his income, the report of such audit in the prescribed form*, duly signed and verified by such an accountant. No such audit is required as a condition for availing of the benefit of the existing investment allowance.
- (f) Subject to the fulfilment of the required conditions, the benefit of investment allowance continues to be available if the sale or transfer of a ship or an aircraft or plant or machinery is made as per a scheme of amalgamation. Such deduction is not provided in the new scheme, because in the Indian context, amalgamations usually arise infrequently and that too only to take care of losing concerns or as a device for tax planning.

17.4 The other salient features of the scheme of the investment deposit account are as under:

- (a) Under section 32AB(1), it has been provided that deposits with the Development Bank or the purchase of a new ship, new aircraft, new machinery or plant should be out of income chargeable to tax under the head "Profits and gains of business or profession". However, for arriving at the book profit, a uniform system of accounting is yet to be enforced even in the organised sector. Hence, the term "profit of eligible business or profession" has been defined as per section 32AB(3) in order to ensure uniformity in determining the profits qualifying for deduction, as also to reduce uncertainty about the interpretation of this term. In terms of section 32AB(3)(a), it has been provided that the profits of eligible business or profession for the purposes of deduction under

* Form No. 3AA is the prescribed form in this regard.

these provisions will mean, in a case where separate accounts in respect of such business or profession are maintained, an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provision of section 32(1) of the Income-tax Act from the amount of profits computed in accordance with the requirements of Parts II and III of the Sixth Schedule to the Companies Act, 1956, ‡[as increased by an amount equal to the depreciation, if any, debited in the audited profit and loss account]. This implies that the profit has to be computed, taking into account only the depreciation for the current year, as admissible under the Income-tax Act. Further, Part II of the Sixth Schedule to the Companies Act lays down the requirements as to profit and loss account. These requirements, as per the provisions of section 32AB(3) of the Income-tax Act, will be applicable in the cases of corporate as well as non-corporate assessees.

17.5 The requirements as per Part II of the Sixth Schedule to the Companies Act, include the following:—

- (i) The profit and loss account shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account and shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of exceptional nature.
- (ii) The profit and loss account shall set out the various items relating to the income and expenditure under the most convenient heads; and in particular shall disclose the turnover, giving the amount of sales in respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately.

† As a result of the amendment of section 32AB(3) (a) by the Finance Act, 1987, with effect from 1-4-1987, the portion within the parentheses marked ‡ is to be read as under:—

“as increased by the aggregate of—

- (i) the amount of depreciation;
- (ii) the amount of income-tax paid or payable, and provision therefor;
- (iii) the amount of surtax paid or payable under the Companies (Profits) Surtax Act, 1964;
- (iv) the amounts carried to any reserves, by whatever name called;
- (v) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) the amount by way of provision for losses of subsidiary companies; and
- (vii) the amount or amounts of dividends paid or proposed, if any debited to the profit and loss account; and as reduced by any amount or amounts withdrawn for reserves or provisions, if such amounts are credited to the profit and loss account”.

- (iii) The commission, brokerage and discount on sales paid will be indicated.
- (iv) In the case of a manufacturing concern, the value of the raw material consumed, giving item-wise break-up and indicating the quantities thereof are to be indicated. The important basic raw material consumed, giving item-wise break-up and indicating the quantities thereof are to be indicated. The important basic raw material should be shown as separate items as far as possible. The intermediates or components procured from other manufacturers may, if their list is too large to be included in the break-up, be grouped under suitable headings, without mentioning the quantities, provided all those items which in value individually account for 10 per cent. or more of the total value of raw material consumed, shall be shown as separate and distinct items with quantities thereof in the break-up.
- (v) The quantity and other particulars of green tea produced and processed by such companies separately should be disclosed together with the opening and closing stock thereof. If such tea is purchased from outside source, the value also of the tea purchased will be disclosed in addition to the quantity and other particulars.
- (vi) The opening and closing stock of goods produced or purchased may be given, disclosing the break-up in respect of each class of goods and indicating the quantities thereof.
- (vii) In the case of all concerns having work-in-progress, the amounts for which such works have been completed at the commencement and at the end of accounting year should be given.
- (viii) The amount provided for depreciation, renewals or diminution in the value of fixed assets should also be given. If such provision is not made by means of depreciation charge, the method adopted for such provision may be disclosed. If no provision is made for depreciation, this fact may be stated. The quantum of arrears of depreciation computed should be disclosed by way of a note.
- (ix) The amount of interest on debentures and other fixed loans, the charge for income-tax and other Indian taxation on profits, etc., should be disclosed.
- (x) The expenditure incurred on consumption of stores and spare parts, power and fuel, rent, repairs, salaries, wages and bonus, contribution to provident fund, etc., may be shown separately for each item.

17.6 The definitions as per Part III of the Sixth Schedule to the Companies Act are as under:—

- (i) The term “provision” means any amount written off or retained by way of providing for depreciation, renewals or diminution in value of asset or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy.
 - (ii) The expression “reserve” shall not include any amount written off or retained by way of providing for depreciation, renewal or diminution in value of the assets or retained by way of providing for any known liability.
 - (iii) The expression “capital reserve” shall not include any amount regarded as free for distribution through the profit and loss account.
 - (iv) The expression “revenue reserve” shall mean any reserve other than the capital reserve.
 - (v) The expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.
- (b) In a case where in respect of eligible business or profession, no separate accounts are maintained or available, the profits of the eligible business or profession shall be such amount which bears to the total profits of the business or profession of the assessee after allowing depreciation under section 32(1), the same proportion as the total sales, turnover or gross receipts of the eligible business or profession bear to the total sales, turnover or gross receipts of the business or profession carried on by the assessee. For example, if the gross receipts of business are Rs. 100 which includes gross receipts of eligible business at Rs. 40 then, in case, the total profit is Rs. 10, the profits of eligible business qualifying for deduction will be Rs. 4.
- (c) To avail of the deduction under this provision, the deposit has to be made in a Development Bank before the expiry of six months from the end of the previous year or before furnishing the return of income, whichever is earlier.
- (d) The Development Bank in the case of an assessee carrying on the business of growing and manufacturing tea in India means the National Bank for Agriculture and Rural Development. In the case of other assessee, Development Bank means the Industrial Development Bank of India and includes such bank or institution as may be specified in the scheme in this behalf.
- (e) The purpose of withdrawal from the Development Bank may be the purchase of any new ship, new aircraft, new machinery or plant or the repayment of “term loans” (as per scheme) utilised for such purchases.

- (f) No deduction shall be allowed in respect of any amount utilised for the purchase of (i) any machinery or plant to be installed in any office premises or residential accommodation including any accommodation in the nature of a guest house; (ii) any office appliances (not being computer); (iii) any road transport vehicle; and (iv) any machinery or plant the whole of the actual cost of which is allowed as a deduction whether by way of depreciation or otherwise in computing the income from business or profession of any one previous year. Computer, for this purpose, is not a plant or a machinery. Hence in respect of any amount utilised for the purchase of a computer installed even in office premises, deduction will be admissible.
- (g) The term "computer" does not include calculation machines and calculating devices.
- (h) For getting the benefit under this provision, the deposit in the Development Bank or the purchase of any new ship, plant, etc., should be out of income from the eligible business or profession. There is an underlying reason for this pre-condition. As mentioned in the Long Term Fiscal Policy (Para. 5.14) since the benefit of investment allowance is related to the cost of plant and machinery irrespective of how it is financed, such a benefit had created a distortion in the profitability of companies depending on the extent to which they were able to find the resources internally or through borrowings to acquire the new ship, plant, etc. That being so, under the Investment Deposit Scheme, deduction will be admissible only if the deposit is made or the ship, plant, etc., is acquired out of income chargeable to tax under the head "Profits and gains of business or profession".

17.7 As provided in section 32AB(10), no deduction shall be allowed under section 32AB(1) in the case of an assessee carrying on business of growing and manufacturing tea in India who has claimed the deduction under section 33AB relating to the tea development account. However, any excess deposit made by such an assessee under section 33AB(2) may not be treated as a bar to deposit further amount under section 32AB for the assessment year 1987-88, so long as the overall ceiling of 20 per cent. of eligible profits is not exceeded. As this problem is limited to only one year, no enabling provision in law is considered necessary for this purpose.

17.8 Consequential amendments have been made in section 80VVA and in the Eleventh Schedule to the Income-tax Act.

17.9 The new section will apply in relation to the assessment year 1987-88 and subsequent years.

17.10 A notification relating to the Investment Deposit Account Scheme, 1986†, is being published separately in the Gazette. The Scheme shall provide that a depositor may utilise the amount deposited under the Scheme for the purposes of purchase of new ship or new aircraft or new machinery or plant for the purposes of his business or profession, or for the purpose of purchase of new computers or for repayment of principal amount of term loans contracted after 31st March, 1986, and taken for a period of 3 years or more from certain financial institutions or from scheduled banks or from other specified institutions. The Scheme shall also lay down the manner of deposit as well as the manner of withdrawals by the depositors.’.

Section 32AB, relating to investment deposit account, has been amended by the Finance Act, 1987, with effect from 1-4-1987.

The amendment of section 32AB(1) clarifies that the deduction under that sub-section shall be allowed in respect of the profits and gains of eligible business or profession computed before loss, if any, brought forward from earlier years is set off under section 72. Further, in a case where the eligible business or profession is carried on by a firm or an association of persons or a body of individuals, deduction shall not be allowable in the case of its partner or member.

The substituted section 32AB(ii), (iii) and (iv) coins the definition of expressions “new ship, “new air-craft”, “new machinery or plant” and “Tea Board”.

The amended section 32AB(3)(a) clarifies that the profits of eligible business or profession as computed in accordance with the provisions of section 32AB(3)(a) shall be the profits before deducting, *inter alia*, the amount of income-tax paid or payable or any provision therefor if such amounts are debited to the profit and loss account.

The new section 32AB(5A) provides that amounts deposited in accordance with the schemes framed or approved under sub-section (1) shall not be permitted to be withdrawn before the expiry of a period of five years from the date of deposit except in cases of (a) closure of business, (b) death of the assessee, (c) partition of a Hindu undivided family, (d) dissolution of a firm, (e) liquidation of a company and (f) in such other circumstances as may be specified in the scheme.

The new section 32AB(5B) clarifies that where any expenditure in respect of which a deduction is allowable under other provisions of the Income-tax Act, is met wholly or partly by utilising the amounts standing to the credit of the assessee in the deposit account, in respect of which a deduction is allowed under section 32AB(1), then such expenditure shall be reduced by the amounts so utilised.

See, the Investment Deposit Account Scheme, 1986 [Notification No. GSR 945(E), dated 15th July, 1986: (1986) 161 ITR (St.) 101-109 as corrected by Notification No. GSR 1213(E), dated 19th November, 1986: (1987) 165 ITR (St.) 178].

Section 32AB(6) has been amended to provide that the amount standing to the credit of the assessee in the deposit account may be utilised in accordance with, and within the time specified in, the scheme.

These amendments will take effect from 1st April, 1987, and will accordingly, apply in relation to the assessment year 1987-88 and subsequent years.

The scope and effect of the above amendments made in section 32AB by the Finance Act, 1987 (11 of 1987), have also been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Modification of provisions relating to investment deposit account.—20.1 The Finance Act, 1986, introduced section 32AB relating to Investment Deposit Account. The provisions apply in relation to assessment year 1987-88 and subsequent years. Under these provisions, an assessee is entitled to a deduction of an amount upto 20% of the profits of “eligible business or profession”, if the said amount is either deposited with the Development Bank within the period upto six months from the end of the previous year or before furnishing the return, whichever is earlier, or is utilised during the previous year for the purchase of a new ship, new aircraft, or new machinery or plant.

20.2 Under the provisions introduced by the Finance Act, 1986, the deduction under section 32AB is allowed after setting off business loss, if any, brought forward from earlier years. To remove hardship in cases where the assessee may not be able to avail of this benefit because of brought forward losses from earlier years, the Finance Act, 1987, now provides that the deduction will be allowed before setting off of brought forward losses.

20.3 The existing provisions could conceivably lead to an interpretation that the deduction is allowable both in the case of the firm and also in the case of the partners in respect of income derived from business carried on by a firm. This was never the intention of the provisions. It has, therefore, been clarified by the Finance Act, 1987, that the deduction under section 32AB shall be allowed in the hands of the firm and not in the hands of the partners in respect of income derived from the business of the firm.

20.4 Under the existing provisions, as introduced by Finance Act, 1986, profits of eligible business or profession, where separate accounts are maintained in respect of such eligible business or profession, means profits as computed in accordance with the Sixth Schedule to the Companies Act, 1956, as reduced by depreciation computed under the provisions of section 32(1) and as increased by the depreciation, debited in the audited profit and loss account. The Finance Act, 1987, has introduced certain further adjustments for arriving at the amount of “profits of eligible business or profession”. The amount arrived at above will have to be increased by provision for taxation and reserves, etc., and decreased by amounts withdrawn

from provisions or reserves if such amounts are credited to the profit and loss account.

20.5 By inserting a new sub-section (5A), the Finance Act, 1987, also provides that the amount deposited with the Development Bank in accordance with the Scheme shall not be permitted to be withdrawn before the expiry of a period of 5 years from the date of deposit, except for the purposes specified in the Scheme and in the following circumstances:

- (a) closure of business;
- (b) death of the taxpayer;
- (c) partition of a Hindu Undivided family;
- (d) dissolution of a firm;
- (e) liquidation of a company.

20.6 The Investment Deposit Account Scheme permits withdrawals for some purposes which are even otherwise deductible under the Income-tax Act. In order to secure that such assessee is not allowed deduction twice in respect of the same expenditure, the Finance Act, 1987, clarifies that where any expenditure is made wholly or partly by utilising the amount credited to the taxpayer in the deposit account, in respect of which deduction is allowed under section 32AB(1), then such expenditure shall not be reduced under the other provisions of the Act.

20.7 Section 32AB(6) lays down that any amount withdrawn by an assessee from his account with the Development Bank but not utilized in accordance with the scheme during the previous year will be treated as income of the year during which the withdrawal was made. There may be a situation where an assessee withdraws the amount and utilizes the same in accordance with the scheme for specified purposes within the period permitted by the scheme but a part of such period may fall in the next accounting year. In such cases, the effect of the existing provisions is that though an assessee has utilized the amount in accordance with the scheme, the amount will be added to the assessee's income in the year in which the withdrawal is made. To remove this anomaly, the Finance Act, 1987, has clarified [section 32AB(6)] that in a case where the amount withdrawn has been utilized for the specified purpose within the period specified in the scheme, such amount would not form part of the income of the assessee in the previous year in which the amount has been withdrawn.

20.8 The utilization of the amount withdrawn is permitted in accordance with the provisions of section 32AB and the Scheme framed thereunder for the purpose of purchasing a "new ship" or "new aircraft" or "new machinery or plant". These expressions have been defined in the *Explanation* to section 32(1)(vi) of the Income-tax Act which has been deleted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 1-4-1988. As a consequence, the Finance Act, 1987, has amended section 32AB by including the definition of the expressions "new ship", "new aircraft" and "new machinery or plant" in the section itself.

20.9 These amendments will come into force with effect from 1st April, 1987, and will, accordingly, apply to assessment year 1987-88 and subsequent years.'”.

Page 1003: section 33:

After line 22 from top, *add*,—

“On the construction of section 16(c) of the Finance Act, 1974, relating to continuance of development rebate in certain cases, see, *Rukmani Metals & Gaseous Ltd. v CIT* [SLP (Civil) No. 14427 of 1982: (1983) 140 ITR (St.) 25 (SC)].”.

Page 1004: section 33:

After line 17 from top, *add*,—

“Pontoon, which is a flat bottomed boat used as ferry-boat, etc. [*CIT v Shri Digvijay Cement Co. Ltd.*, (1986) 159 ITR 253 (Guj)] or trawler [*Chola Fish & Farms Pr. Ltd. v CIT*, (1987) 166 ITR 600 (Mad)] is covered by the expression ‘ship’.”.

Page 1006: section 33:

After line 19 from top, *add*,—

“A machinery used for transporting men and material such as a lift is not excluded from eligibility of development rebate allowance [*CIT v Jyoti Ltd.*, (1987) 163 ITR 274 (Guj)]. Also see, *Punjab National Bank Ltd. v CIT*, (1983) 141 ITR 886 (Del)].

But dumpers were, on concession, held to be road transport vehicles [*Shiv Construction Co. v CIT*, (1987) 165 ITR 160 (Guj); *CIT v Shiv Constructions*, (1987) 165 ITR 159 (Guj)].”.

Page 1006: section 33:

At the end of the paragraph titled “Office appliances, what they are?”, *add*,—

“These are also held not to constitute office appliances:—

1. Air-conditioners and electric fans even if installed in an office premises [*CIT v Tarun Commercial Mills Ltd.*, (1985) 151 ITR 75 (Guj)].
2. Data processing machines [*CIT v IBM World Trade Corporation*, (1986) 161 ITR 673 (Bom)].
3. Internal telephone system [*CIT v Tata Chemicals Ltd.*, (1986) Taxation 80(3)-64 (Bom)].”.

Page 1007: section 33:

At the end of paragraphs titled “Installed—meaning of”, *add*,—

“In *CIT v Steel Rolling Mills of Hindustan Pr. Ltd.* [(1987) 164 ITR 633 (Cal)], the rental income from hiring out of gas cylinders was taxed as business income. A gas cylinder was held to have been installed as soon as it was brought into use for storing gas.”.

Page 1008: section 33:

In line 3 from bottom, after "71 ITR 707 (Mad)].", *add*,—"The expression 'wholly used' for the purpose of the business refers to the manner of user. If one is the owner of the machinery and is using it oneself and one has full control over it, then one is using it oneself and nobody else is using it. It is the control which determines who is using it. User means not only getting benefit, but also controlling, running, stopping, repairing, replacing, etc. [*Punjab National Bank Ltd. v CIT*, (1983) 141 ITR 886, 895 (Del)].".

Page 1009: section 33:

At the end of line 2 from top, *add*,—"The user of the machinery in test production or experimental manufacture has been held to be user for the purposes of the assessee's business even though the regular commercial production started in a subsequent year [*V. Ramakrishna & Sons Ltd. v CIT*, (1984) 149 ITR 554, 562 (Mad)].

Where rental income from a particular asset is assessed as business income, the assessee may be entitled to claim development rebate if requisite conditions in that regard are satisfied [see, *Smt. Kavita Sanghi v CIT*, (1982) 133 ITR 48 (MP); *CIT v Steel Rolling Mills of Hindustan Pr. Ltd.*, (1987) 164 ITR 633 (Cal)].".

Page 1012: section 33:

After line 4 from top, *add*,—

"Unabsorbed development rebate of earlier years can be carried forward and set off against the income of the assessee in a subsequent year even though in that subsequent year, the asset concerned was not used for the assessee's own business but was hired out by him [*CIT v Narang Dairy Products*, (1983) 142 ITR 532 (All)].

Unabsorbed development rebate cannot be carried forward as a business loss under the provisions of section 72. It can only be carried forward as unabsorbed development rebate and set off as per the provisions of section 33(2)(ii). Under section 33(2)(ii), the unabsorbed development rebate can be set off against the 'total income' for the subsequent year. Such 'total income' must mean income from whatever source and computed for the other purposes of the Act, except for the deductions specifically excluded thereby. Thus, such unabsorbed development rebate can be set off even against long-term capital gains. The option referred to in section 71(2) does not matter [*CIT v Victoria Mills Ltd.*, (1985) 153 ITR 733 (Bom)].

However, the Kerala High Court in *Collis Line Pr. Ltd. v ITO* [(1982) 135 ITR 390 (Ker)] has proceeded on the basis that unabsorbed development rebate cannot be set off against "Income from other sources". With respect, the matter requires reconsideration.

It may be noted that for getting the benefit of set off of unabsorbed development rebate in a subsequent year, there is no pre-condition that the

business must have been continued in that subsequent year [*CIT v Kishanlal & Sons (Udyog) Pr. Ltd.*, (1985) 154 ITR 735 (Cal)].”.

Page 1012: section 33:

In the last line of the paragraph titled “*Unlike unabsorbed depreciation, unabsorbed development rebate of a registered, or treated as registered, firm is not allocable amongst partners*”, after “119 ITR 454 (Mad)”, add—
“; *CIT v National Coal Development Corporation*, (1986) 157 ITR 45 (Pat)”.

Page 1013: section 33:

Before line 3 from bottom, add,—

“The provisions of section 33(6) have been considered in *Syndicate Bank v CIT* [(1984) 150 ITR 198 (Karn)]; *Madras Race Club v CIT* [(1985) 151 ITR 675 (Mad)].”.

Page 1016: section 33:

After line 16 from top, add,—

“Further cases holding that the industry concerned was a priority industry are as under:—

- (1) *CIT v Ratlam Straw-Board Mills Pr. Ltd.*, (1981) 132 ITR 700 (MP) [manufacturing of straw-board].
- (2) *CIT v East India Industries (M) Pr. Ltd.*, (1983) 139 ITR 1059 (Mad) [manufacturing of waterproof paper].
- (3) *CIT v Simpson & Co. Ltd.*, (1983) 141 ITR 35 (Mad) [bus-body building]. Also see, *CIT v Jayanand Khira & Co. Pr. Ltd.*, (1987) 32 Taxman 434 (Bom).
- (4) *CIT v Perfect Liners*, (1983) 142 ITR 654 (Mad) [manufacture of component parts of internal combustion engine].
- (5) *CIT v Vijaya Spng. Mills Ltd.*, (1983) 143 ITR 64 (AP) [manufacturing cotton yarn]. Also see, *CIT v North Arcot District Co-operative Spng. Mills Ltd.*, (1984) 148 ITR 406 (Mad)].
- (6) *Ahmedabad Mfg. & Calico Pr. Ltd. v CIT*, (1986) 162 ITR 800 (Guj) [P.V.C. processing plant used for production of P.V.C. resins].
- (7) *CIT v Simac Group (India) Pr. Ltd.*, (1987) 163 ITR 867 (Bom) [manufacturing of hand-knitting machines].
- (8) *CIT v National Rayon Corporation Ltd.*, (1984) 17 Taxman 352 (Bom) [manufacturing tyre-cord].
- (9) *CIT v Alkali Chemical Corporation of India Ltd.*, (1987) 165 ITR 698 (Cal) [manufacturing polythene and rubber chemicals].
- (10) *CIT v Rambal Pr. Ltd.*, (1984) 42 CTR (Mad) 45 [manufacturing bolts, nuts and screws for automobile machineries].”.

Before the paragraph titled "Aluminium (metal)", *add*,—

"Further cases holding that the industry concerned was not a priority industry are as under:—

- (1) *Traco Cable Co. Ltd. v CIT*, (1982) 138 ITR 385 (Ker) [manufacture of telephone cables].
- (2) *CIT v Khosla Plastics Pr. Ltd.*, (1982) 138 ITR 455 (Bom) [manufacture of electrical appliances, such as switches, sockets, etc.].
- (3) *Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal) [manufacture of pigments out of alumina].
- (4) *CIT v Tensile Steel Ltd.*, (1983) 141 ITR 223 (Guj), special leave petition granted by the Supreme Court: (1983) 140 ITR (St.) 3 [wire manufactured from billets of special steel].
- (5) *Tarapore & Co. (Cochin) v CIT*, (1985) 154 ITR 537 (Mad) [construction and repairing of dockyard].
- (6) *CIT v S.S.M. Sizing Centre*, (1985) 155 ITR 782 (Mad) [warping, sizing and bleaching of cotton yarn after purchase].
- (7) *CIT v S. S. M. Finishing Centre*, (1985) 155 ITR 791 (Mad) [bleaching, dyeing, etc., of cloth after purchase].
- (8) *CIT v Veena Textiles Pr. Ltd.*, (1985) 155 ITR 794 (Mad) [embroidering designs on cloth after purchase and dyeing of such cloth].
- (9) *CIT v Fitwell Caps Pr. Ltd.*, (1986) 159 ITR 454 (Karn) [manufacturing aluminium caps from aluminium sheets].
- (10) *Hindustan Wire Products Ltd. v CIT*, (1986) 161 ITR 749 (SC) [manufacturing insulated copper wire].
- (11) *CIT v Kerala Solvent Extractions Ltd.*, (1987) 165 ITR 174 (Ker) [extraction of oil from oil-cakes by the solvent extraction process and not directly from seeds]."

Page 1026: section 33A:

At the end of paragraph titled "*In respect of what?*", *add*,—

"In the facts of *Debpara Tea Co. Ltd. v CIT* [(1983) 143 ITR 947 (Cal)], the assessee was held entitled to development allowance in respect of expenditure on replantation of tea plants on virgin soil."

Page 1028: section 33A:

At the end of paragraph titled "*Requisite conditions for allowance*", *add*,—

"The following departmental circular is relevant to section 33A(3):—

'Development allowance under section 33A—Creation of reserve—Instruction regarding.—Attention is invited to section 33A of the Income-tax Act, 1961, which provides for the grant of deduction by way of development allowance of a certain percentage of expenses incurred on planting of tea bushes on any land in India owned by an assessee who carries on the business of growing and manufacturing tea. Sub-section (3) of section 33A of

the Income-tax Act stipulates certain conditions which must be fulfilled before the above-said deduction is allowed. One of the conditions is that a reserve of an amount equal to 75% of the development allowance to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during the period of eight years next following for the purpose of the business of the undertaking.

2. Clarifications have been sought from the Board regarding the manner in which the amount of reserve for claiming deduction on account of development allowance is to be calculated. In this connection, it is pointed out that the provisions of law require that the reserve should be equal to 75% of the "development allowance actually to be allowed". It is argued that since only 40% of the income of a tea company is chargeable to tax, the actual allowance on account of development allowance is only 40% of the amount calculated on the basis of specified percentage of the cost of planting tea bushes.

3. A similar question had been examined with regard to the quantum of reserve to be created for claiming deduction on account of development rebate in the cases of tea companies. *Vide* Board's Circular letter F. No. 1(8)-58/TPL, dated 1st November, 1958, it was clarified that in the case of tea companies it would be sufficient compliance if the reserve created is equal to 75% of the amount actually allowed as development rebate. Since the conditions regarding the creation of reserve for the grant of development allowance under section 33A are identical to those prescribed with regard to the creation of reserve for claiming deduction on account of development rebate, it is clarified that the reserve required to be created for claiming development allowance should be calculated @ 75% of the amount which is actually allowed by way of development allowance, i.e., 75% of 40% of the amount calculated on the basis of specified percentage of the cost of planting tea bushes.

4. The above clarification may please be brought to the notice of all the officers working in your charge.' [Circular No. 325, dated 3rd February, 1982.]".

Page 1030: new section 33AB:

At the beginning of the page, *add*,—

"Section 33AB relating to tea development account has been inserted by the Finance Act, 1985 (32 of 1985).

The scope and effect of the newly inserted section 33AB have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Deduction of contributions to special account with the National Bank for Agriculture and Rural Development.—14.1 With a view to encouraging persons engaged in the business of growing and manufacturing tea in

India to mobilise resources internally for specified purposes, the Finance Act, 1985, has inserted a new section 33AB in the Income-tax Act. The section provides that where a person who carries on the business of growing and manufacturing tea in India has, during the previous year, deposited with the National Bank for Agriculture and Rural Development any amount in a special account maintained by such person with that Bank in accordance with the scheme approved in this behalf by the Tea Board, such person shall be allowed a deduction of the amount so deposited during the previous year or 20 per cent. of the profits from the business of growing and manufacturing tea in India (before making this deduction), whichever is less. Any excess deposit made in the previous year shall be treated as a deposit made by such person in the next following previous year.

14.2 Where any amount is withdrawn by such person from the special account with the Bank, for acquiring any asset, being building, machinery, plant or furniture, the actual cost of such asset shall, for the purposes of the Income-tax Act, be reduced by the amount so utilised. Where the amount withdrawn from the special account is utilised for incurring any expenditure for the purposes of the business of growing or manufacturing tea in India, such expenditure shall be reduced by the amount so utilised and only the resultant sum, if any, shall be taken into account for the purpose of computation of income.

14.3 Where any amount released from the special account during any previous year by the Bank for being utilised by such person for the purpose of the business of growing and manufacturing tea in India, in accordance with the scheme, is not so utilised during that previous year, the unutilised amount shall be deemed to be the profits and gains from business and accordingly chargeable to income-tax as the income of such person of that previous year.

14.4 The deduction under section 33AB shall be subject to the provisions of section 80VVA† relating to restriction on the aggregate amount to be allowed as deduction in the case of companies.

14.5 The new provision takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years†.

The Finance Act, 1987, has amended section 33AB(5). By that Act, the provisions of that section 33AB shall have application only for assessment years 1986-87 and 1987-88."

† Section 80VVA shall stand omitted by the Finance Act, 1987, with effect from 1-4-1988.

† As a result of the amendment of section 33AB(5) by the Finance Act, 1987, the application of the provisions of section 33AB has been restricted to two assessment years only, namely, 1986-87 and 1987-88 assessment years.

Page 1033: section 33B:

Before the text of section 34, *add*,—

“Withdrawal of rehabilitation allowance.—For the effect of the insertion (before the *Explanation*) of a proviso to section 33B, reference may be made to pages liv-lv of Vol. 4.”.

Page 1037: section 34:

At the end of the page, *add*,—

“VII. *The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986*.—By this Act, sub-sections (1) and (2) of section 34 have been omitted with effect from 1st April, 1988. The omission is consequential to the new scheme of depreciation allowance envisaged in that Act.”.

Page 1038: section 34(1):

At the end of the paragraph titled “I. *Prescribed particulars to be furnished*”, *add*,—

“In the facts of the *Indian Bank Ltd. v CIT* [(1985) 153 ITR 282 (Mad)], depreciation was held allowable on proportionate basis even though item-wise particulars of the assets were not available because indisputably such assets were used for business purposes.

However, in *Beco Engineering Co. Ltd. v CIT* [(1984) 148 ITR 478 (Punj)], claim for depreciation and extra-shift allowance was not made in the revised return although such claim was made in the original return. It was held that the Income-tax Officer was not statutorily bound to grant depreciation and extra-shift allowance.

It may be noted that as a result of the omission of section 34(1) by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 (46 of 1986), the furnishing of prescribed particulars as per rule 5AA [which has also been omitted by the Income-tax (Third Amendment) Rules, 1987, with effect from 2nd April, 1987] is not needed for and from assessment year 1988-89.”.

Page 1039: section 34(2):

At the end of line 9 from top, *add*,—“In this regard, reference may be made to *Gujarat Mineral Development Corporation Ltd. v CIT* [(1983) 143 ITR 822 (Guj)].

It may be noted that section 34(2) has been omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1988.”.

Page 1040: section 34(3):

On the subject “*Creation of the reserve essential for the development rebate allowance*”, reference may also be made to *CIT v Malayala Manorama & Co. Ltd.* [(1983) 143 ITR 29 (Ker)] holding that if the reserve is not created in the relevant previous year, the assessee is not entitled to claim deduction for development rebate.

Pages 1040-1041: section 34(3):

On the subject "*Point of time by which the requisite reserve to be created*", reference may also be made to—

- (1) *CIT v National Industrial Corporation*, (1982) 137 ITR 586 (Del) [reserve not created in the final accounts—but when presented to the annual general meeting of the shareholders, they resolved and directed creation of reserve—held that such resolution should be construed to amount to creation of reserve and rebate was allowable].
- (2) *CIT v Janardhan Zarapkar*, (1982) 138 ITR 482 (Bom) [reserve created after filing the original return but before filing a revised return—rebate held allowable].
- (3) *CIT v Haryana State Minor Irrigation & Tubewell Corporation Ltd.*, (1983) 140 ITR 437 (Punj) [reserve created after completion of assessment proceedings—held development rebate not allowable].

Page 1042: section 34(3):

Before line 8 from bottom, *add*,—

"Preponderance of judicial opinion is that non-creation of the requisite reserve in the previous year, which had resulted in loss, will not disentitle the assessee to carry forward the allowable development rebate to a subsequent profit-earning year. The creation of the requisite reserve in such subsequent year will suffice for allowance in that year [*Addl. CIT v Markanda Engineers*, (1982) 136 ITR 111 (Del); *CIT v U.P. Hotel & Restaurants Ltd.*, (1984) 145 ITR 598 (All); *CIT v Metal Forging Pr. Ltd.*, (1984) 149 ITR 259 (Del); *Addl. CIT v Indo-Austro Corporation Pr. Ltd.*, (1984) 149 ITR 329 (Del); *Acropolymers Pr. Ltd. v CIT*, (1985) 151 ITR 158 (Punj); *CIT v Durga Enterprises Pr. Ltd.*, (1985) 154 ITR 585 (Del); *CIT v Kelvin Jute Co. Ltd.*, (1986) 159 ITR 770 (Cal); *CIT v Tata Robins Frazer Ltd.*, (1987) 163 ITR 886 (Pat); *CIT v Amaravathi Sri Venkatesa Paper Mills Ltd.*, (1987) 164 ITR 229 (Mad)].".

Page 1043: section 34(3):

At the end of line 4 from the bottom, *add*,—"Also see, *Bharat Vijay Mills Ltd. v ITO*; *Gurjargravures Pr. Ltd. v ITO*, (1985) 154 ITR 786 (Guj), where it was held that the circulars directing condonation of genuine deficiency in the created reserve if the deficiency is made good subsequently are binding on the authorities."

Page 1046: section 34(3):

In line 13 from bottom, after "123 ITR 619 (Mad)", *add*,—" ; *CIT v Arasan & Co.*, (1985) 152 ITR 206 (Mad); *Addl. CIT v India Tin Industries Pr. Ltd.*, (1987) 166 ITR 454 (Karn)" [holding that creation of excess reserve in an earlier year will not entitle allowance of rebate in a subsequent year].

Page 1047: section 34(3):

At the end of paragraph titled "*Where a reserve need not be created*", *add*,—

"In *CIT v M.P. Electricity Board* [(1987) 166 ITR 24 (MP)], the State Electricity Board has been held to be covered by the first proviso to section 34(3)(a) and, therefore, exempt from creating and maintaining a development rebate reserve. Also see, *CIT v M. P. State Electricity Board*, (1987) 166 ITR 26 (MP)."

Page 1052: section 34(3):

At the end of line 18 from bottom, *add*,— "The decision in *CIT v Indian Motors Transport Co. (P.) Ltd.* [(1974) 95 ITR 73 (Punj)] has been affirmed by the Supreme Court in *Indian Motors Transport P. Ltd. v CIT* [(1985) 156 ITR 489 (SC)], where it has been held that if before the completion of the assessment the asset concerned is sold or otherwise transferred, the Income-tax Officer can outright refuse to allow the development rebate instead of first allowing and then withdrawing. In view of the above Supreme Court ruling, the Gujarat ruling in *Bharat Petroleums v CIT* [(1979) 116 ITR 75 (Guj)] is no more good law."

Page 1052: section 34(3):

Before line 4 from bottom, *add*,—

"Issue of bonus shares out of the development rebate reserve is nothing but distribution of profits within the meaning of section 34(3)(a)(i) as also section 155(5)(ii)(a) so as to entail withdrawal of the development rebate already allowed [*CIT v Hunsur Plywood Works Pr. Ltd.*, (1986) 161 ITR 639 (Karn)].

In *South India Steel Rolling Mills v CIT* [(1982) 135 ITR 322 (Mad)], the assessee-firm to which the development rebate was granted was dissolved, within eight years' period, on the death of a partner. Thereafter, the surviving partner along with the legal representative of the deceased partner constituted a firm to continue the business. It was held that the development rebate reserve was not utilised by the assessee-firm for business purposes for a period of eight years. Therefore, the development rebate allowed was liable to be withdrawn.

However, in *CIT v L. Balasubramanian* [(1982) 138 ITR 815 (Mad)], a partial partition of the HUF assets was effected. The learned judges have proceeded on the basis that the HUF had ceased to exist and therefore the provisions regarding utilisation of the reserve did not operate in relation to it. With respect, it is submitted that, ordinarily, in case of a partial partition, the family does not cease to exist. It seems that the case requires reconsideration."

Page 1053: section 34(3):

After serial No. (3) dealing with illustrations: "*Asset held sold or otherwise transferred*", *add*,—

“(4) A machinery belonging to the sole proprietor becoming property of the firm as a result of conversion of sole proprietary concern into a partnership [*Baldevji v CIT*, (1985) 156 ITR 776 (Mad); *CIT v Shantilal Rugnathji Desai*, (1987) 163 ITR 245 (Guj)]. *Contra*: *CIT v Vijaya Productions Pr. Ltd.* [(1985) 152 ITR 613 (Mad), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 4], where it was held that such conversion did not involve a transfer.

(5) A lease of the trawler was held resulting in a transfer of a right or interest in the trawler [*Blue Bay Fisheries (P.) Ltd. v CIT*, (1987) 166 ITR 1 (Ker)].”

After serial No. (2) dealing with illustrations: “*Asset held not to have been sold or otherwise transferred*”, *add*,—

“(3) Partition of HUF assets does not involve ‘transfer’ [*CIT v S. Krishna Rao*, (1985) 154 ITR 643 (AP); *CIT v N. T. Ramarao (HUF)*, (1987) 163 ITR 453 (AP)]. Any subsequent sale or transfer by the divided member to whom the asset was allotted is not material or relevant for the purpose of withdrawal of the rebate [*CIT v S. Balasubramanian*, (1982) 138 ITR 815 (Mad), special leave petition granted by the Supreme Court: (1984) 150 ITR (St.) 81; *CIT v M. V. S. Sastry*, (1986) 157 ITR 543 (Mad)].

Also see, *CIT v Lakshmi Flour Mills*, SLP (Civil) Nos. 9084-9092 of 1982: (1984) 150 ITR (St.) 80.”

Page 1065: section 35:

Before the paragraph titled “*Scientific research*”, *add*,—

“Section 35 has also been amended by—

- the Finance Act, 1983 (11 of 1983)§;
- the Finance Act, 1984 (21 of 1984)§; and
- the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986).

For effect of the amendments made by Acts marked§, see pages lv-lviii of Vol. 4.

The amendments made by Act 46 of 1986 are consequential to the new scheme of depreciation allowance introduced by that Act.”

Page 1066: section 35(1)(i):

After line 15 from top, *add*,—

“For claiming deduction under section 35(1)(i), it is not necessary that the research must have been carried by the assessee himself. The deduction can be claimed even if the research is carried on by some other person for and on behalf of the assessee [*CIT v National Rayon Corporation Ltd.*, (1983) 140 ITR 143 (Bom); *CIT v National Rayon Corporation.*, (1985) 155 ITR 413 (Bom)].

The words ‘related to business’ in section 35(1)(i) cannot be interpreted in a narrow manner, *viz.*, related to the present business of manufacturing activities of the assessee. A research pertaining to substitution of the

existing raw material by another which is more easily and economically available must be regarded as one 'related to' the business of the assessee [*CIT v National Rayon Corporation Ltd.*, (1983) 140 ITR 143, 147, 148 (Bom)].”.

Page 1066: section 35:

For the text of rule 6, effective from 1-6-1982, reference may be made to page 5441 of Vol. 6.

Page 1067: section 35(1)(iii):

After line 5 from top, *add,—*

“In *CIT v Bharat Ram Charat Ram Pr. Ltd.* [(1986) 157 ITR 199 (Del)], the assessee paid rent on behalf of an approved institution for research in social science or statistical research for the building in which the research is to be carried on. Such payment was held eligible for deduction under section 35(1)(iii). Also see, *CIT v Bharat Ram Charat Ram*, (1984) 43 CTR (Del) 175.”.

Page 1068: section 35(2)(iv):

After line 6 from top, *add,—*

“As a result of the retrospective amendment of section 35(2)(iv) by the Finance (No. 2) Act, 1980, an assessee is not entitled to depreciation on any capital asset represented by expenditure which has been allowed as a deduction under section 35 for the same year or any other year [*CIT v International Instruments Pr. Ltd.*, (1983) 144 ITR 936 (Karn); *CIT v Lucas-TVS Ltd.*, (1984) 149 ITR 771 (Mad); *CIT v Sundaram Fasteners Ltd.*, (1984) 149 ITR 773 (Mad); *CIT v Mahindra Sintered Products Ltd.*, (1986) 161 ITR 692 (Bom); *CIT v Alkali & Chemical Corporation of India Ltd.*, (1987) 165 ITR 698 (Cal); *Alkali & Chemical Corporation of India Ltd. v CIT*, (1986) 161 ITR 820 (Cal); *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 678 (Cal); *Mysore Kirloskar Ltd. v CIT*, (1987) 166 ITR 836 (Karn)].”.

Page 1083: section 35A:

After line 15 from top, *add,—*

“In order to apply section 35A, it is necessary that there should have been an expenditure of a capital nature, such expenditure should have been incurred after the 28th February, 1966, and such expenditure should have been incurred on the acquisition of patent rights or copyright used for the purposes of the business. Only when all these conditions are satisfied, any question of deduction under section 35A would arise [*CIT v Cochin Refineries Ltd.*, (1982) 135 ITR 278, 283 (Ker), special leave petition granted by the Supreme Court: (1985) 151 ITR (St) 13].

In that case, the payment towards patent rights was held to have been incurred prior to 28th February, 1966, and, therefore, not eligible for amortisation under section 35A.

Where there was no material to show that the asset concerned was a patent right or copyright, the assessee was held not entitled to the benefit of section 35A [*Rockweld Electrodes (India) Ltd. v CIT*, (1986) 158 ITR 819 (Mad)].”.

Page 1085: new section 35AB:

At the end of the page, *add*,—

“The new section 35AB.—A new section 35AB, relating to amortisation of expenditure on acquisition of know-how, has been inserted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986.

The scope and effect of the new section 35AB have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Deduction in respect of expenditure on “know-how”.—15.1 With a view to providing further encouragement for indigenous scientific research, the Finance Act, 1985, has inserted a new section 35AB in the Income-tax Act. The section provides that any lump sum consideration paid by the taxpayer for acquiring any know-how for use for the purpose of his business will be allowed as deduction by spreading it over 6 years, namely, the year in which the lump sum consideration is paid and the five immediately succeeding years. Where the “know-how” is developed in a laboratory, university or institution, referred to sub-section (2B) of section 32A, the consideration shall be spread equally over 3 years.

15.2 For the purposes of this section, “know-how” means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil well or other source of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto).

15.3 The new section will apply in relation to the assessment year 1986-87 and subsequent years.’”.

Page 1097: section 35B:

Before the paragraph titled “*Who is entitled to claim*”, *add*,—

“Export Markets Development Allowance withdrawn.—As a result of the amendment of section 35B(1)(a) by the Finance Act, 1983, no deduction under section 35B is available in relation to expenditure incurred after 28th February, 1983. For effect of such amendment, see portion of the departmental circular No. 372, dated 8th December, 1983, reproduced at page lix of Vol. 4.”.

Page 1097: section 35B:

At the end of paragraph titled “*Who is entitled to claim?*”, *add*,—

“The weighted deduction under section 35B can be claimed only by an exporter and not by an importer [*S. Muthiah v CIT: M. Subbaraya Mudaliar v CIT*, (1983) 140 ITR 1030 (Mad)].

Where the objects of the assessee's business do not enable it to undertake export or marketing of goods outside India as one of its businesses, the assessee cannot claim weighted deduction under section 35B [*Karnataka Small Industries Development Corporation Ltd. v CIT*, (1987) 164 ITR 140 (Karn)].

Weighted deduction available, even though no profit results from the export business.—An assessee can claim weighted deduction under section 35B even though there is no corresponding receipt from the export business [*CIT v C. R. Narayana Rao*, (1984) 146 ITR 310 (Mad)].

Weighted deduction not dependent on non-eligibility to section 80-0 relief.—The weighted deduction under section 35B can be availed of by an assessee on fulfilment of the conditions thereabout. That deduction is not dependent on the assessee not being eligible to relief under section 80-0. These two reliefs are not alternative but are independent of each other [*CIT v C. R. Narayana Rao*, (1984) 146 ITR 310 (Mad)].

Page 1099: section 35B:

Rule 6AA has further been amended by the Income-tax (Third Amendment) Rules, 1982. For the text of the amended rule, see pages 5442-5443 of Vol. 6.

Page 1102: section 35B:

At the end of the paragraphs titled "*Special provisions for A. Y. 1978-79 and 1979-80—section 35B(1A)*", add,—

"In the facts of *CIT v R. N. Oswal Hosiery Factory* [(1987) 165 ITR 662 (Punj)], it was held that the special provisions of section 35B(1A) were satisfied and, therefore, the assessee was entitled to claim weighted deduction in respect of payment of commission."

Page 1103: section 35B:

At the end of paragraph titled "*Rectification not possible if allowance was not claimed*", add,—

"The above Allahabad decision [124 ITR 55 (All)] has been dissented from by the Madhya Pradesh High Court in *CIT v K. N. Oil Industries* [(1983) 142 ITR 13 (MP)] which held that if it is apparent from the record that the assessee was entitled to weighted deduction under section 35B, such deduction can be granted through rectification proceedings even though the assessee did not claim it in his return.

Claim made for the first time before the appellate authority.—In the facts of the following cases, the appellate authority was held justified in entertaining a claim under section 35B raised before it for the first time:—

1. *Madhu Jayanti Pr. Ltd. v CIT*, (1985) 154 ITR 277 (Cal).

2. *CIT v Gordhandas Jerambhai*, (1985) 154 ITR 288 (Cal).

3. *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 484 (Punj).

However, in the facts of *Silver Plastochem (P.) Ltd. v CIT* [(1985) 20 Taxman 381 (Bom)], the appellate authority was held not justified in entertaining the claim under section 35B made before it for the first time.”.

Page 1103: section 35B:

At the end of paragraph titled “*Onus on the assessee*”, add,—

“In order to be eligible for weighted deduction under section 35B, it is required to be established by the assessee that the expenditure for which such deduction is being claimed had been incurred wholly and exclusively for the specified purposes [*Birla Jute Mfg. Co. Ltd. v CIT*, (1986) 162 ITR 413, 419 (Cal)]. Also see, *CIT v Navabharat Enterprises*, (1987) 31 Taxman 173 (AP).

What the section requires is that the assessee must establish that the expenses were incurred outside India for the specified activities performed outside India. The burden is on the assessee to prove that fundamental fact. It is not sufficient that the assessee sold goods to foreign buyers or that it was assisted by a commission agent in connection with the sale of those goods, but the burden is on the assessee to prove that the commission paid was wholly and exclusively for the specified activities conducted outside the country. The object of the special concession allowed under section 35B is to facilitate export trade; and, only in regard to expenditure incurred outside the country, although paid in India, can the assessee claim the benefit. In other words, once it is proved that the expenditure was incurred outside India wholly and exclusively for the specified activities, the assessee would not be disqualified for the deduction, even if payment towards such expenditure was actually made in India. The wording of the section, which is intended to facilitate export trade, does not justify the narrower construction that, not only the expenditure should have been incurred outside India, but the payment also should have been made outside India [*CIT v C. Tharian & Sons*, (1987) 166 ITR 607, 609, 610 (Ker), dissenting from *CIT v Southern Sea Foods P. Ltd.*, (1983) 140 ITR 855 (Mad) and *CIT v Jay Engineering Works*, (1984) 149 ITR 297 (Del); *CIT v P. Alikunju, M. A. Nazir, Cashew Industries*, (1987) 166 ITR 611 (Ker); *CIT v Orion Coir Mats and Matting Manufacturers (P.) Ltd.*, (1987) 166 ITR 616 (Ker)].”.

Illustrative cases on weighted deduction under section 35B.—In the facts of the following cases, the weighted deduction under section 35B was held allowable:—

- (1) *Handicrafts and Handloom Export Corporation of India v CIT*, (1983) 140 ITR 532 (Del) [custom duty paid by the foreign office of the assessee for goods exported].

- (2) *CIT v Godrej & Boyce Mfg. Co. Pr. Ltd.*, (1984) 149 ITR 594 (Bom) [commission paid to a foreign agent for securing business, for publicising assessee's products in the agent's territory and for maintaining a show room at agent's expense]. Also see, *CIT v Oswal Woollen Mills Ltd.*, (1987) 61 CTR (Punj) 62.
- (3) *CIT v Indo Marine Agencies (Kerala) Pr. Ltd.*, (1986) 158 ITR 604 (Ker) [expenses on storage at a place outside India and local duties paid there]. Also see, *CIT v Asiatic Sea Foods*, (1986) 160 ITR 869 (Ker).
- (4) *CIT v Vippy Solvex Product Pr. Ltd.*, (1986) 159 ITR 487 (MP) [interest paid to bank on export packing credit loan account which was opened after receipt and execution of contract for supply of goods to a foreign country].
- (5) *CIT v Pooppally Foods*, (1986) 161 ITR 729 (Ker) [commission paid to a foreign agent for promotion of export trade].
- (6) *CIT v J. B. Advani & Co. (Mysore) (Private) Ltd.*, (1987) 163 ITR 638 (Karn) [sums paid by the assessee for the promotion of sales of goods outside India]. Also see, *CIT v Orient Goa Pr. Ltd.*, SLP (Civil) Nos. 7894-7896 of 1980: (1983) 141 ITR (St.) 50 (SC).
- (7) *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 558 (Cal) [payment of export inspection agency fees for obtaining certificate which was pre-requisite for selling goods in foreign countries].

Also see, *CIT v Machinery Mfg. Corporation Ltd.*, SLP (Civil) No. 9502 of 1981: (1984) 147 ITR (St.) 3 (SC); *CIT v Navabharat Enterprises Pr. Ltd.*, (1987) Tax LR 1231 (AP).

In the facts of the following cases, the weighted deduction under section 35B was held not allowable:—

- (1) *CIT v K. N. Oil Industries*, (1982) 134 ITR 651 (MP) [expenditure on carriage of goods to their foreign destination and that on the transit insurance of such goods]. Also see, *Handicrafts & Handloom Export Corporation of India v CIT*, (1983) 140 ITR 532 (Del); *D. & H. Secheron Electrodes Pr. Ltd. v CIT*, (1984) 149 ITR 400 (MP); *Bharat General & Textile Industries Ltd. v CIT*, (1985) 153 ITR 747 (Cal); *Indian Textiles v CIT*, (1986) 157 ITR 112 (Mad); *K. Vensimal & Sons v CIT*, (1986) 157 ITR 807 (Mad); *K. E. Kesavan & Co. v CIT*, (1986) 158 ITR 608 (Ker).
- (2) *CIT v Southern Sea Foods Pr. Ltd.*, (1983) 140 ITR 855 (Mad) [commission paid in India for procuring orders from foreign buyers in respect of goods exported].
- (3) *V. D. Swami & Co. P. Ltd. v CIT*, (1984) 146 ITR 425 (Mad) [clearing and forwarding charges and other expenses incurred in India].
- (4) *CIT v Madras Rubber Factory Ltd.*, (1984) 149 ITR 411 (Mad)

[royalty paid to a foreign collaborator under a technical know-how agreement].

- (5) *CIT v Quilon Marine Produce Co.*, (1985) 48 CTR (Ker) 135 [trading discount is not an expenditure within the meaning of section 35B]. Also see, *CIT v Orion Coir Mat and Mattings Manufacturers (P.) Ltd.*, (1987) 166 ITR 616 (Ker).
- (6) *Duncan Bros. & Co. Ltd. v CIT*, (1987) 31 Taxman 102 (Cal) [amount of penalty paid to the foreigner for delay in shipment of goods].

Also see, *Taylor Instrument Co. of India Ltd. v CIT*, SLP (Civil) No. 6932 of 1982: (1984) 150 ITR (St.) 78; *CIT v Navabharat Enterprises*, (1987) 31 Taxman 173 (AP).

So far as general administrative expenses incurred by the assessee in India are concerned, these may qualify for weighted deduction only to the extent these can be co-related, on analysis, to any of the activities listed in sub-clauses (i) to (viii) of section 35B(1)(b) and not beyond that [*Handicrafts & Handloom Export Corporation of India v CIT*, (1983) 140 ITR 532 (Del). Also see, *CIT v Raunaq International Ltd.*, (1986) 158 ITR 701 (Del)].

On the point of allowability of weighted deduction under section 35B, reference may also be made to *Universal Ferro & Allied Chemicals Ltd. v P.G.K. Warriar*, (1983) 143 ITR 959 (Bom); *CIT v Jay Engineering Works*, (1984) 149 ITR 297 (Del); *CIT v Orion Coir Mats and Mattings Manufacturers (P.) Ltd.*, (1987) 166 ITR 616 (Ker)."

Page 1104: section 35B:

After line 6 from top, *add.*—

"In the facts of the following cases, the Tribunal was directed to state the case to the High Court and refer the questions of law:

- (1) *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 207 (Punj).
- (2) *CIT v Premier Traders*, (1987) 163 ITR 719 (All).
- (3) *Aero Engineering Works v CIT*, (1983) 34 CTR (Punj) 276.
- (4) *CIT v Bhagat Bros.*, (1987) 165 ITR 660 (Punj).
- (5) *Jain Export Pr. Ltd. v CIT*, (1987) 61 CTR (Del) 207.
- (6) *CIT v Kraft Place*, (1987) 167 ITR 236 (All).

But, in the facts of *CIT v York Hosiery Mills Pr. Ltd.* [(1986) 51 CTR (Del) 276], it was held that no question of law arose. Also see, *CIT v Lal's International*, (1987) 167 ITR 237 (All).

A question about proportion of a particular expenditure eligible for weighted deduction has been held to be a question of fact [*CIT v Novelty Trading Corporation*, (1984) 150 ITR 453 (All); *K. Vensimal & Sons v CIT*, (1986) 157 ITR 807 (Mad); *CIT v Raunaq International Ltd.*, (1986) 158 ITR 701 (Del)]."

Page 1106: section 35C:

After the central heading "*Agricultural development allowance*", *add*,—
"Withdrawal of agricultural development allowance.—The Finance Act, 1983, withdrew the weighted element from the allowance. The Finance Act, 1984, has withdrawn the agricultural development allowance in respect of any expenditure incurred after 29th February, 1984.

For the effect of these amendments see pages lix-lx of Vol. 4."

Page 1109: section 35C:

After the paragraph titled "*Introduction*", *add*,—

"Requisite conditions.—The requisite conditions for attracting the provisions of section 35C have been discussed in *CIT v Navabharat Enterprises Pr. Ltd.* [(1987) 165 ITR 603 (AP)]."

Page 1110: section 35C:

After line 20 from top, *add*,—

"In *Indian Leaf Tobacco Development Co. Ltd. v CIT* [(1982) 137 ITR 827 (Cal)], the assessee was held entitled to a weighted deduction on account of agricultural development allowance under section 35C in respect of depreciation on assets used for the purpose of providing goods, services or facilities as laid down in section 35C(1)(b).

In *Okayti Tea Co. Ltd. v ITO* [(1986) 160 ITR 487 (Cal)], the Tribunal was held justified in refusing to consider the claim made for the first time before it in respect of agricultural development allowance under section 35C."

Page 1112: section 35CC:

At the end of the page, *add*,—

"Legislative amendments.—Section 35CC has been amended by the Finance Act, 1983. For the effect, see page lxi of Vol. 4. Further, the Finance Act, 1985, has amended section 35CC. The scope and effect of the 1985-amendment have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:

'Withdrawal of deduction relating to rural development allowance.—
16.1 Section 35CC of the Income-tax Act relating to rural development allowance provides that where a company or a co-operative society incurs any expenditure on any programme of rural development, the expenditure so incurred shall be deducted in computing the taxable profits. The deduction is to be allowed only if the approval of the prescribed authority has been obtained in respect of the programme before incurring the expenditure.

16.2 The concession is open to abuse as the correctness of claims in respect of expenditure incurred on rural development programmes is difficult to verify. The Finance Act, 1985, has discontinued this concession, except in relation to programmes of rural development which have been approved by the prescribed authority before 17th March, 1985, by providing that no such programme shall be approved after 16th March, 1985.'"

Page 1124: section 35CCA:

After line 5 from top, *add*,—

“Section 35CCA has also been amended by the Finance Act, 1983. For the effect of such amendment, see pages lxii-lxiv of Vol. 4.

The provisions of section 35CCA have been considered in *Kaka Ba and Kala Budh Public Charitable Trust v CIT* [(1984) 146 ITR 9 (Guj)].”.

Page 1131: new section 35CCB:

Before the text of section 35D, *add*,—

“A new section 35CCB has been inserted by the Finance Act, 1982, with effect from 1st June, 1982. For the effect of the new section, see pages lxiv-lxv of Vol. 4. Rule 6AAC, which is relevant to section 35CCB, has been reproduced at page 5444 of Vol. 6.”.

Page 1134: section 35D:

After the paragraph titled “*Introduction*”, *add*,—

“In the facts of *Addl. CIT v Farasol Ltd.* [(1987) 163 ITR 364 (Raj)], preliminary expenses incurred in the earlier accounting year were held deductible for the assessment year 1966-67.”.

Page 1136: section 35D:

After line 12 from top, *add*,—

“The word ‘being’ has been held to be used in section 35D(2)(c)(iv) in an illustrative and not restrictive manner. In that view of the matter, expenditure incurred in connection with refund of the amount over-subscribed is expenses in connection with the issue of shares and, therefore, eligible for amortisation under section 35D [*CIT v Shree Synthetics Ltd.*, (1986) 162 ITR 819 (MP)].”.

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Page 1159: section 36(1)(i):

After the paragraphs titled “*Insurance premium paid for covering risks to stocks and stores*”, *add*,—

“Insurance premium paid on policies taken out by the assessee-firm on the lives of the partners with a view to ensure availability of cash in order to pay off legal representative of the deceased partner is neither deductible under section 36(1)(i) nor under section 37(1) [*CIT v Khodidas Motiram Panchal*, (1986) 161 ITR 99 (Guj)].

However, in the context of the Agricultural Income-tax Act, the expenditure incurred by way of premium paid on insurance against loss or theft of cash in transit has been held allowable under a provision similar to section 37(1) [*CAGIT v Pullangode Rubber & Produce Co. Ltd.*, (1986) 160 ITR 337 (Ker); *Pullangode Rubber & Produce Co. Ltd. v CAGIT*, (1986) 160 ITR 339 (Ker)].”.

Page 1160: new section 36(1)(ib):

After line 14 from top, *add*,—

“(ib) INSURANCE PREMIUM ON EMPLOYEES' HEALTH

Insurance premium on employees' health.—Clause (ib) has been inserted by the Income-tax (Amendment) Act, 1986 (26 of 1986) with effect from 1st April, 1987, i.e., for and from assessment year 1987-88. The scope and effect of the newly inserted section 36(1)(ib) and other related provision have been elaborated in the following portion of the departmental circular No. 464, dated 18th July, 1986, as under:—

'Deduction in respect of the premium paid for insurance on health.—

4.1 In para. 98 of the Budget speech for the year 1986-87, the Finance Minister had announced a proposal to provide relief to self-employed persons and salary earners other than those whose medical needs were taken care of by the employers in respect of medical expenses incurred by them by allowing a deduction out of their total income, subject to limits, for any premium on medical insurance policies taken by them with the General Insurance Corporation of India.

4.2 In pursuance of the above, the Amending Act has inserted a new clause (ib) in sub-section (1) of section 36 of the Income-tax Act, to allow a deduction to an employer in respect of premium paid by him by cheque for insurance on the health of his employees in accordance with a scheme framed in this behalf by the General Insurance Corporation of India and approved by the Central Government. This deduction will not have any monetary ceiling. The scheme is being finalised separately.

4.3 Further, the Amending Act has inserted a new section 80D in the Income-tax Act, to provide a deduction to an assessee upto Rs. 3,000 a year in respect of premium paid by him by cheque for insurance,—

- (i) on his health or on the health of his spouse or dependent parents or dependent children, and
- (ii) in the case of a Hindu undivided family or association of persons or body of individuals consisting only of (in either case) husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, on the health of any member of such family, association or body of individuals.'”.

Page 1162: section 36(1)(ii):

After line 6 from top, *add*,—

“III. 'Payment of bonus—Allowability under section 36(1)(ii) of the Income-tax Act, 1961—Regarding.—Reference is invited to Board's Circular No. 287, dated 4th December, 1980. Under first proviso to section 36(1)(ii) of the Income-tax Act, 1961, deduction for payment of bonus or commission to an employee for services rendered by him is restricted

to the amount payable under the Payment of Bonus Act, 1965. Under this Act, a minimum of 8.33% and a maximum of 20% of salary is payable as bonus depending on the circumstances of the case. Deduction under first proviso to section 36(1)(ii) of the Income-tax Act is not necessarily restricted to the minimum of 8.33% of the salary in all cases. Whatever amount of bonus is payable in the case within these two limits under the Payment of Bonus Act, 1965, is admissible for deduction under the first proviso to section 36(1)(ii) of the Income-tax Act, 1961.' [Circular No. 414, dated 14th March, 1985.]

For applicability of the proviso to section 36(1)(ii), it is necessary to investigate as to whether the establishment of the assessee was one to which the Payment of Bonus Act was applicable [see, *CIT v Industrial & Agricultural Engineering Co. Pr. Ltd.*, (1985) 151 ITR 357 (Bom)].”.

Page 1166: section 36(1)(ii):

At the end of line 13 from the bottom, *add*,—“That was the state of law prior to the enactment of the Payment of Bonus (Amendment) Act, 1985 (30 of 1985). After the operation of Act 30 of 1985 with effect from 22nd May, 1985, the bonus payable under that Act in case of an employee whose salary or wage is between Rs. 750 and Rs. 1,600 per mensem is also to be calculated on the basis of his actual salary or wage.

As a result of the amendments made to the Payment of Bonus Act, 1965 by the Payment of Bonus (Second Amendment) Act, 1985 (67 of 1985), operative from 7th November, 1985, the eligibility limit for the payment of bonus as provided for in the definition of ‘employee’ in the Payment of Bonus Act has been raised from Rs. 1,600 to Rs. 2,500. This is, however, subject to the condition that the bonus payable to an employee drawing salary or wages exceeding Rs. 1,600 per mensem is to be calculated as if his salary or wages were Rs. 1,600 per mensem. It has also been provided that these changes will be applicable in respect of the bonus payable under the Act for the accounting year commencing on any day in the year 1984 and every subsequent accounting year.

Bonus in excess of statutory one—when allowable.—It cannot be contended, as a general rule, that the deduction is not permissible in respect of an employee covered by the Payment of Bonus Act, 1965, if what is paid as bonus is in excess of, or otherwise than, what is payable under that Act, even if the payment of the excess amount as bonus is justifiable when considered with reference to clauses (a) to (c) of the second proviso to section 36(1)(ii). The two provisos to section 36(1)(ii) must be read together to correctly understand the permissible deduction in terms of section 36(1)(ii). The object of that clause is to encourage the management to pay bonus not only to the extent to which it is statutorily bound to pay to the employee, but also in excess of that limit, provided the payment is justifiable as a reasonable payment. To say that the second proviso to section 36(1)(ii) has no application in respect of employees covered under

the Bonus Act, and that bonus paid to them in excess of, or otherwise than, what is statutorily required (although reasonable when considered with reference to clauses (a) to (c) of the second proviso) is not deductible under section 36, is to put an artificial construction upon a beneficial provision [*CIT v P. Alikunju, M. A. Nazir, Chashew Industries*, (1987) 166 ITR 611, 615 (Ker)].

In *CIT v Hindustan Wire Products Ltd.* [(1987) 166 ITR 758 (Punj)], the High Court directed the Tribunal to refer the question of law, namely, whether the Tribunal was right in allowing deduction under section 36(1)(ii) of bonus paid in excess of the limits prescribed under the Payment of Bonus Act, 1965?"

Page 1167: section 36(1)(ii):

At the end of the paragraph titled "*Customary or festival bonus not affected*", add,—

"Attendance bonus [*Baidyanath Ayurveda Bhawan Mazdoor Union v Management*, (1984) 17 Taxman 19 (SC)] or incentive bonus or customary bonus [*CIT v Sivanandha Mills Ltd.*, (1985) 156 ITR 629 (Mad); *CIT v Arya Vaidya Pharmacy (CBE) Ltd.*, (1985) 156 ITR 630 (Mad). Also see, *CIT v Babcock & Willcox of India Ltd.*, (1987) 165 ITR 105 (Cal)] is outside the purview of the Payment of Bonus Act, 1965.

Tests for determination of customary or festival bonus have been laid down in *Vegetable Products Ltd. v Their Workmen* [AIR 1965 SC 1499] and *Upendra Chandra Chakraborty v Union Bank of India* [AIR 1985 SC 1010].

In *Workmen of Associated Rubber Industry Ltd. v Associated Rubber Industry Ltd.* [(1986) 157 ITR 77 (SC)], for ascertaining the rate of profit bonus, which is governed by the Payment of Bonus Act, the dividend received by the subsidiary company was taken into account for ascertaining the gross profit of the holding company. This was so held because the creation of the subsidiary company was held to be for the purpose of avoidance of the welfare legislation."

Page 1171: section 36(1)(ii):

At the end of line 11 from top, add,— "*Shahzada's case* [(1977) 108 ITR 358 (SC)] has been considered in *Bombay Motors v CIT* [(1986) 157 ITR 623 (Raj)]."

Page 1172: section 36(1)(ii):

Before the paragraph titled "*Further considerations*", add,—

"In the facts of *Anand Jyoti Printers Pr. Ltd. v CIT* [(1987) 165 ITR 771 (MP)], commission paid by the assessee to its manager was found to be on account of extra-commercial consideration and, therefore, held not an allowable deduction under section 36(1)(ii)."

Page 1175: section 36(1)(ii):

At the end of line 12 from top, *add*,—"Also see, *ITAT v Jananmandal Ltd.*, (1983) 143 ITR 228 (All).".

Page 1176: section 36(1)(ii):

At the end of line 10 from bottom, *add*,—

"For accrual of liability to pay bonus under an agreement, the existence of the agreement during the relevant accounting year is essential. In case the agreement is executed after the end of the accounting year, no deduction can be claimed in respect of that accounting year as there is no accrual of liability in that regard [*Macneill & Magor Ltd. v CIT*, (1983) 141 ITR 521 (Cal)].

Also see, *Central Paints Ltd. v CIT*, (1984) 146 ITR 212 (MP).".

Page 1177: section 36(1)(ii):

After line 12 from top, *add*,—

"Where a statutory liability has accrued in a particular year, its quantification in a subsequent year cannot shift the liability to the year of quantification. The allowance has to be made for the year in which such liability has accrued [*CIT v Bisra Stone Lime Co. Ltd.*, (1987) 164 ITR 693 (Cal). Also see, *CIT v Electric Lamp Manufacturers (India) Pr. Ltd.*, (1987) 165 ITR 115 (Cal). Cf. *Ruby Rubber Works Ltd. v AgITO*, (1983) 139 ITR 218 (Ker).

But an amount set apart under section 15(1) of the Payment of Bonus Act, 1965, as 'set on' of bonus to make payments in future is not an accrued liability. Such a provision is for meeting an unascertained future contingent liability and is not a permissible deduction [*Malwa Vanaspati & Chemical Co. Ltd. v CIT*, (1985) 154 ITR 655 (MP); *Rayalaseema Mills Ltd. v CIT*, (1985) 155 ITR 19 (AP); *P.K. Mohammed Pr. Ltd. v CIT*, (1986) 162 ITR 587 (Ker)].

On the allowability of bonus payments, reference may also be made to *Central Paints Ltd. v CIT* [(1984) 146 ITR 212 (MP)].".

Page 1180: section 36(1)(ia):

After line 26 from top, *add*,—

"Withdrawal of weighted deduction under section 36(1)(ia).—Section 36(1)(ia) has been amended by the Finance Act, 1984 (21 of 1984). For the effect, see page lxvi of Vol. 4.".

Page 1181: section 36(1)(iii):

At the end of the paragraph titled "*Requisites for allowance*", *add*,—

"If all the requisite conditions for allowance are fulfilled, it is not possible to make a part disallowance unless there is a finding that a part of the capital borrowed was not used for the purposes of the business [*D. & H. Secheron Electrodes Pr. Ltd. v CIT*, (1983) 142 ITR 528 (MP); *D. & H. Secheron Electrodes Pr. Ltd. v CIT*, (1984) 149 ITR 400 (MP); *D. & H. Secheron Electrodes Pr. Ltd. v CIT*, (1984) Taxation 73(1)-40 (MP)].

Even if any of the above three conditions is not fulfilled, that is, there is no borrowing, no allowance is permissible under section 36(1)(iii) [*CIT v Sri Rajagopal Transport Pr. Ltd.*, (1983) 144 ITR 573 (Mad); *CIT v Sundaram Fasteners Ltd.*, (1984) 149 ITR 773 (Mad)].”.

Page 1182: section 36(1)(iii):

After line 2 from top, *add*,—

“If any amount obtained for whatever purpose is actually utilised in the business of the assessee and if any interest or incidental payment had to be made for securing the user of the money in the business of the assessee then such an agreement has to be considered as for the purpose of facilitating the running of the business by retention of the money in the business and thereby incidental to the purpose of carrying on the business [*New Central Jute Mills Ltd. v CIT*, (1982) 136 ITR 742 (Cal)].”.

Page 1183: section 36(1)(iii):

At the end of paragraph titled “*Exploitation of the asset in the accounting year not essential*”, *add*,— “Also see, *CIT v Insotex Pr. Ltd.*, (1984) 150 ITR 195 (Karn).”.

“**User for non-business purposes—extent of disallowance.**—Where it is found that the borrowings were utilised for non-business purposes, the disallowance is to be made at the full rate of interest payable on such borrowed money. The amount of interest, if any realised from such utilisation is not to be taken into account for ascertaining the extent of the disallowance [*CIT v India Silk House*, (1985) 152 ITR 79 (Mad)].

Where the utilisation for non-business purposes is made out of a composite fund of borrowings and other funds, the authority concerned cannot proceed on the presumption that such utilisation was made out of the former or the latter. In such a case, a co-relation between such utilisation and the nature of the feeding fund is essential for the purpose of allowance or part allowance [see, *CIT v United Supply Agency Pr. Ltd.*, (1985) 155 ITR 262 (Cal). Also see, *CIT v Alok Paper Industries*, (1982) 138 ITR 729 (MP); *CIT v Ambal Mills Pr. Ltd.*, (1983) 142 ITR 771 (Mad).

Also see, *Cloth Traders Pr. Ltd. v CIT*, (1984) 16 Taxman 383 (Guj).”.

Pages 1185-1186: section 36(1)(iii):

At the end of the paragraphs titled “*No difference in utilisation of borrowings for the acquisition of a capital asset or a revenue asset*”, *add*,—

“In the facts of *Addl. CIT v Aniline Dyestuffs & Pharmaceuticals Pr. Ltd.* [(1982) 138 ITR 843 (Bom)], the new undertaking was held not an independent venture unconnected with its existing business and therefore interest on capital borrowed for the new project was held allowable deduction. Also see, *CIT v J. K. Synthetics Ltd.*, (1985) Taxation 77(3)-130 (All).

However, in the facts of *Deys Medical Stores Mfg. Pr. Ltd. v CIT* [(1986) 162 ITR 630 (Cal)], it was found that the new project was separate and distinct from the assessee's existing business and therefore interest paid on the borrowings utilised for the new project was held not allowable from the income of the existing business.

Also see, *CIT v Kishanlal & Sons (Udyog) Pr. Ltd.*, (1985) 154 ITR 735 (Cal)."

Page 1186: section 36(1)(iii):

At the end of paragraph titled "*Interest on borrowings for purchasing shares*", add,—

"In *CIT v Sujani Textiles Pr. Ltd.* [(1985) 151 ITR 653 (Mad)], interest paid on borrowings used for purchasing investment shares has been held not an allowable deduction under section 36(1)(iii) because in such a case the utilisation was for a non-business purpose."

Page 1188: section 36(1)(iii):

In line 19 from top, after "105 ITR 295 (Mad)", add,—"*followed in Prem Nazir v CIT*, (1986) 159 ITR 182 (Mad)" [holding that no allowance is possible under section 67(3) if there is no share income from the firm in the year concerned]. Also see, *CIT v Gopal Reddy*, (1987) 34 Taxman 392 (AP).

Page 1188: section 36(1)(iii):

At the end of line 14 from the bottom, add,—"*In CIT v Smt. Shanti Devi Jalan* [(1983) 139 ITR 152 (Cal)], interest paid by a partner on the debit balance in so far as it was attributable to the partner's share in the loss of the firm has been held allowable as a deduction in the hands of the partner."

Page 1189: section 36(1)(iii):

In line 12 of the paragraph titled "*Payments as well as receipts of interest by a partner—only the net amount to be considered*", after "122 ITR 826 (All)", add,—"; *CIT v T. V. Ramaniah & Sons*, (1986) 157 ITR 300 (AP); *CIT v Kothari & Co.*, (1987) 165 ITR 594 (Karn); *CIT v Balaji Commercial Syndicate*, (1987) 165 ITR 596 (Karn). *Contra: CIT v O. M. S. S. Sankaralinga Nadar & Co.*, (1984) 147 ITR 332 (Mad); *C. S. Ramachary & Co. v CIT*, SLP (Civil) No. 17337 of 1985: (1987) 167 ITR (St.) 63 (SC).

It may be noted that *Explanation 1* to section 40(b) [which has been inserted by the Taxation Laws (Amendment) Act, 1984, with effect from 1st April, 1985] makes specific provisions for disallowance of the net interest (X—Y) in the hands of the firm [see, *CIT v Motilal Ramjiwan & Co.*, (1987) 34 Taxman 490 (Raj)]."

Page 1192: section 36(1)(iii):

At the end of serial No. (4), add,—"*Also see, CIT v Tarachand Meghraj*,

(1983) 142 ITR 630 (Cal); *CIT v Devichand Uttamchand*, (1984) 148 ITR 530 (Bom); *CIT v Subhagmal Jorawar Mal*, (1986) 162 ITR 720 (Raj); *CIT v Fejmal Rajmal Chhabra*, (1987) 167 ITR 363 (Raj) [holding that interest on amount gifted through book-entries† was allowable]. *Contra*: on its own facts, *Prominent Motors (India) v CIT*, (1983) 140 ITR 326 (Del).”.

Page 1194: section 36(1)(iii):

After serial No. (17), giving illustrations where interest paid was held allowable, *add*,—

“(18) Assessee carried on two businesses, A and B. Business A was taken over and compensation therefor taken over to business B. Borrowed capital of business A was also transferred to business B. Interest held allowable in computing the profits of business B [*Addl. CIT v Rewari Electric Supply & General Industries*, (1982) 138 ITR 473 (Del)].

(19) Monies allotted on a partition of HUF to wife and minor daughters were used in the business allotted to the *karta*. Interest paid held allowable in the hands of the *karta* [*Addl. CIT v M. R. Raghupathy*, (1983) 139 ITR 476 (Mad)].

(20) Interest paid on borrowed monies utilised for payment of dividend, held allowable [*CIT v Shree Changdeo Sugar Mills Ltd.*, (1983) 143 ITR 469 (Bom); *CIT v Belapur Co. Ltd.*, (1986) 161 ITR 516 (Bom); *CIT v Phalton Sugar Works Ltd.*, (1986) 162 ITR 622 (Bom)].

(21) Interest on borrowed monies utilised for construction of business premises [*CIT v Hindustan Times Ltd.*, (1983) 144 ITR 670 (Del)].

(22) Amount standing to the credit of the father in the business of the joint family was, on father's death, inherited under section 8 of the Hindu Succession Act, 1956, by the son. Interest payable by the family business on such amount was held deductible in the hands of the family because the son had inherited in his individual capacity [*CWT v Chander Sen*, (1986) 161 ITR 370 (SC)].

Also see, *CIT v Navabharat Enterprises Pr. Ltd.*, (1987) 165 ITR 603 (AP); *CIT v Dharam Singh Babek Singh*, (1987) Taxation 84(3)-262 (Del); *CIT v Dharam Singh Babek Singh*, (1987) 60 CTR (Del) 182; *CIT v R. Dalmia*, (1987) 62 CTR (Del) 195.”.

Page 1195: section 36(1)(iii):

At the end of the page, *add*,—“Similarly, interest paid on overdraft bank account, wherein all business receipts were deposited and where from all

On the point of validity of gifts through book-entries, reference may now be made to *CIT v Dr. R. S. Gupta* [(1987) 165 ITR 86 (SC)]; *CED v Vithal Das* [(1987) 165 ITR 23 (SC)]; *Gulab Rai Govind Prasad v CIT* [(1987) 165 ITR 163 (SC)].

payments including taxes were made, was held allowable in its entirety because the department did not co-relate the borrowing with the payment of taxes [*Indian Explosives Ltd. v CIT*, (1984) 147 ITR 392 (Cal); *Alkali & Chemical Corporation of India Ltd. v CIT*, (1986) 161 ITR 820 (Cal); *Crescent Dyes & Chemicals Ltd. v CIT*, (1983) Tax LR 1520 (Cal)].”

Page 1197: section 36(1)(iii):

After serial No. (11) giving illustrations where interest on borrowed capital was held not allowable, *add*,—

“(12) Assessee having two units, A and B, made advances from unit A to unit B. Interest debited in unit B held not allowable because the entity was the same [*Malwa Mills Karmchhari Paraspar Sahkari Sanstha Ltd. v CIT*, (1983) 140 ITR 379 (MP)].

(13) Interest paid on borrowed money utilised for payment of taxes, held not allowable [*CIT v Shree Changdeo Sugar Mills Ltd.*, (1983) 143 ITR 469 (Bom); *CIT v Phalton Sugar Works Ltd.*, (1986) 162 ITR 622 (Bom); *Dey's Medical Stores Mfg. Pr. Ltd. v CIT*, (1986) 162 ITR 630 (Cal). [For allowability of such interest, reference may be made to section 80V which was operative for assessment years 1976-77 to 1985-86.]

(14) Interest paid under section 220(2) for delayed payment of tax—held not allowable [*CIT v International Instruments Pr. Ltd.*, (1982) 144 ITR 936 (Karn)].

(15) Assessee, carrying on two businesses A and B, borrowed money for construction of premises for business A. Business A was, later, closed down and transferred to a third party. Interest paid by assessee on such borrowings held not deductible from business B because the two businesses A and B did not constitute the same business [*CIT v Veecumsee*, (1985) 152 ITR 708 (Mad)].

(16) Interest paid on money borrowed to the extent such borrowings were given to the sister concern was held not allowable under section 36(1)(iii) [*Triveni Engineering Works Ltd. v CIT*, (1987) 167 ITR 742 (All)].

Also see, *Shankar Theatres v CIT*, (1984) 146 ITR 547 (Bom); *R. K. Machine Tools v CIT*, SLP (Civil) No. 11634 of 1984: (1987) 166 ITR (St.) 109 (SC).”

Page 1198: section 36(1)(iii):

At the end of line 2 from top, *add*,—“The question as to what were the non-business borrowings is one of fact [*Kwality Restaurant & Ice Cream Co. v CIT*, (1986) 158 ITR 188 (Del)].

Also see, *CIT v Sobhagmal Jorawar Mal*, (1986) 162 ITR 720 (Raj).”

Page 1199: section 36(1)(iv):

At the end of the paragraph titled “Provisions analysed”, *add*,—

“For admissibility of a contribution towards a recognised provident fund

as a permissible deduction, a contribution must have been made in accordance with the rules of that fund [*Western India Paper & Board Mills v CIT*, (1982) 137 ITR 525 (Bom)]. In the facts of that case, contribution made for the benefit of the managing director was held not entitled to deduction under section 36(1)(iv) because the rules of the fund did not permit the managing director to become a member of the fund.

In *CIT v British India Corporation* [(1983) 142 ITR 563 (All)], a contribution to the recognised provident fund was held eligible for deduction under section 36(1)(iv) even though it was made in derogation of the articles of association of the company because such contribution fulfilled the conditions laid down in section 36(1)(iv) in that behalf. Also see, *Addl. CIT v Bengal Salt Co. Ltd.*, (1983) 32 CTR (Cal) 1.”.

Page 1205: section 36(1)(iv):

Before the paragraph titled “*Superannuation fund in a foreign country*”, add,—

“The following departmental circular is also relevant to approved superannuation fund:—

‘Approval of Superannuation Fund under Part B of the 4th Schedule—Rule 89 of the Income-tax Rules—Instructions regarding.—An assessee is entitled under section 36(1)(iv) of the Income-tax Act, 1961, of a deduction of any sum paid by an employer by way of contribution towards an approved superannuation fund subject to such limits as may be prescribed by the Board or such conditions as the Board may think fit to specify.

2. As per rule 89 of the Income-tax Rules, 1962, the trustees may either enter into a scheme of insurance with the Life Insurance Corporation or accumulate the contribution in respect of each beneficiary and purchase annuity from the LIC at the time of retirement or death of each employee or on his becoming incapacitated prior to retirement.

3. These annuities can be either “annuity certain”, i.e., an annuity payable for a fixed term of years and independent of any contingency, or it may be an annuity which depends upon a contingency, for example, dependent on human life.

4. A question has arisen as to whether pension benefits can be provided to the employees under rule 89 of the said Rules in the form of an “annuity certain” also. The question has been examined in consultation with the Ministry of Law. It is pointed out that rule 89 refers to the purchase of an annuity from the LIC at the time of retirement or death of each employee or on his becoming incapacitated prior to retirement and rule 90 lays down the condition that only 1/3rd of such annuity can be commuted having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality. Rule 3(b) of Part B of Schedule IV also clarifies that the sole purpose of such fund would be the provision of annuities for employees on their retirement or on their becoming incapacitated prior to such retirement, or for the widows, children

or dependants of persons who are or have been such employees on the death of those persons. Rule 6 also provides for taxing the contributions paid to an employee during his lifetime in circumstances other than those referred to in section 10(13).

5. In view of all these provisions, the Board are advised that a superannuation fund, where rules provide for pension benefits in the form of "annuity certain", is not entitled for approval as the same is not covered under rule 89 of the Income-tax Rules, 1962. It is desired that the cases of the funds already approved should also be reviewed and in case of funds where rules provide for pension benefits in the form of "annuity certain", the trustees should be advised to make suitable amendments in the rules within a reasonable time, say, three months. The Commissioners of Income-tax may also consider the withdrawal of approval in cases where such necessary amendments are not effected in the rules.' [Circular No. 403, dated 5th December, 1984.]".

Page 1215: section 36(1)(v):

After line 4 from top, *add*,—

"Investment of fund moneys—rule 101.—In *Carborandum Universal Ltd. v CIT* [(1984) 146 ITR 1 (Mad)], loan was taken on the mortgage of the machinery embedded in the earth. It was held that the mortgage was of an immovable property and therefore rule 101 of the Income-tax Rules, 1962, as it stood up to 31 October, 1974, could not be taken to have been violated. The gratuity fund was directed to be accorded approval.

It may be noted that rule 101 was amended by the Income-tax (Second Amendment) Rules, 1987 [Notification No. S.O. 166(E), dated 9-3-1987: (1987) 165 ITR (St.) 309], with effect from 1st April, 1987. The following departmental circular explained the scope and effect of the amendments:—

'Approved gratuity funds—Rule 101 of the Income-tax Rules, 1962.—The Government has notified in the Official Gazette dated March 9, 1987, the Income-tax (Second Amendment) Rules, 1987. The said Amendment Rules amend the provisions of rule 101 of the Income-tax Rules, 1962, with effect from April 1, 1987.

2. Under the existing provisions of rule 101 of the Income-tax Rules, 1962, monies contributed to approved gratuity funds are required to be deposited in a Post Office Savings Bank Account or a current account with any scheduled bank, or are required to be utilised for the purpose of making contributions under Group Gratuity Scheme entered into with the Life Insurance Corporation of India. To the extent such monies are not so deposited or utilised, they are required to be invested in the modes of investment specified in rule 67(2) of the Income-tax Rules, 1962.

3. Under the amended provisions, the contributions received by any approved gratuity fund on or after April 1, 1987, will be required to be deposited in a Post Office Savings Bank Account or in a current account

with any scheduled bank or will be required to be utilised for the purpose of making contributions under Group Gratuity Scheme entered into with the Life Insurance Corporation of India. The contributions will not be permitted to be deposited in any of the modes of investment specified in rule 67(2) of the Income-tax Rules.

4. The amended provisions may be brought to the notice of the officers working in your charge.' [Circular No. 482, dated March 26, 1987.]

As a result of the amendments of rule 101 by the Income-tax (Fourth Amendment) Rules, 1987 [Notification No. S.O. 684(E), dated 8-7-1987], the effect of the amendments of rule 101 by the Income-tax (Second Amendment) Rules, 1987, has been done away with, with retrospective effect from 1st April, 1987. Thus, the position as it stood prior to amendments of rule 101 by the Income-tax (Second Amendment) Rules, 1987, has been restored. Thus, the position of law as stated in paragraph 2 of the above departmental circular No. 482, dated 26th March, 1987, holds the field even on or after 1st April, 1987. The position as stated in paragraph 3 of that circular did never come into operation.

Annual contribution—rule 103.—Under rule 103, the ordinary annual contribution by the employer to an approved gratuity fund is to be made on a reasonable basis as may be approved by the Commissioner having regard to the length of service of each employee concerned. However, such contribution is not to exceed 8½% of the salary [which includes dearness allowance] of each employee during each year. For this purpose, the salary is to be taken on the basis of the contract of employment and not on the basis of what was actually paid in a given month(s) to the employee [*CIT v Super Spng. Mills Ltd.*, (1987) 166 ITR 518 (AP)].

No power to go behind the approval.—Once an approval has been accorded by the Commissioner to a gratuity fund, it is binding on the assessing and other authorities under the Act. None of the authorities has power to go behind the approval granted by the Commissioner [*CIT v Super Spng. Mills Ltd.*, (1987) 166 ITR 518 (AP)].

Page 1215: section 36(1)(v):

After line 14 from top, *add*,—

“Contribution to unapproved gratuity fund.—An amount paid towards an unapproved gratuity fund has been held deductible under section 37(1) even though it is not deductible under section 36(1)(v) [*CIT v Warner Hindustan Ltd.*, (1985) 151 ITR 701 (AP)].”

Page 1215: section 36(1)(v):

In line 19 of paragraph titled “Section 37(1) may also be relevant”, after “123 ITR 760 (Mad)”, *add*,—“affirmed in *CIT v Andhra Prabha Pr. Ltd.*, (1986) 158 ITR 416 (SC); *CIT v Mettur Spng. Mills*, (1983) 140 ITR 991 (Mad); *CIT v Nangdala Tea Co. Ltd.*, (1983) Tax LR (NOC)

10 (Cal); *CIT v Visnagar Taluka Mazdoor Sahakari Mandali Ltd.*, (1987) 163 ITR 224 (Guj)".

Page 1215: section 36(1)(va):

Before the central heading "(vi) *Deduction in respect of animals*", add,—

"(va) DEDUCTION IN RESPECT OF EMPLOYEE'S CONTRIBUTION TO ANY WELFARE FUND

Employee's contribution to any welfare fund to be allowed only if actually credited to the fund by the due date.—Section 36(1)(va) has been newly inserted by the Finance Act, 1987, with effect from 1st April, 1988. The new clause provides that deduction in respect of any sum received by the assessee as contributions from any of his employees towards any provident fund or superannuation fund or any other welfare fund [such contributions included within the definition of 'income' as per section 2(24)(x)] is to be allowed only if such sum is credited by the assessee to the employee's account in the relevant fund on or before the 'due date'. The expression 'due date', for the purposes of this section, means the date by which the assessee is required as an employer to credit such contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise.

The scope and effect of the newly inserted section 36(1)(va), as also of the newly inserted provisos to section 43B, of newly inserted section 56(2)(ic) and of newly inserted section 57(ia), have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Measures for penalising employers who misutilise contributions to the provident fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for welfare of employees.—12.1 The existing provisions provide for a deduction in respect of any payment by way of contribution to a provident fund or superannuation fund or any other fund for welfare of employees in the year in which the liability is actually discharged (section 43B). The effect of the amendment brought about by the Finance Act, 1987, is that no deduction will be allowed in the assessment of the employer(s) unless such contribution is paid to the fund on or before the "due date". Due date means the date by which an employer is required to credit a "contribution" to the employee's account in the relevant fund under the provisions of any law or term of contract of service or otherwise.

12.2 In addition, contribution of the employees to the various funds which are deducted by the employer from the salaries or wages of the employees will be taxed as income [insertion of new sub-clause (x) in clause (24) of section 2] of the employer, if such contribution is not credited by employer in the account of the employee in the relevant fund by the "due

date". Where such income is not chargeable to tax under the head "Profits and gains of business or profession" it will be assessed under the head "Income from other sources".

12.3 Payment by way of tax or duty, liability for which has accrued in the previous year, will be allowed as a deduction if it is made by the due date of furnishing the return under section 139(1) in respect of the assessment year to which the aforementioned previous year relates.

12.4 These amendments will take effect from 1-4-1988 and will, accordingly, apply from assessment year 1988-89 and subsequent years.'."

Page 1216: section 36(1)(vi):

After line 20 from top, *add*,—

"In *Adarsha Dugdhalaya Private Ltd. v ITO* [(1987) 168 ITR 48 (Bom)], the petitioner carried on the business of dairy farming and maintained cattle therefor. The method of valuation adopted in respect of cattle which ceased to give milk was to value such cattle at fifty per cent. of their cost of acquisition. That method was accepted by the Income-tax Officer for several years. In a subsequent year, the Income-tax Officer issued notices under section 154 for rectifying such method of valuation in view of the provisions of section 36(1)(vi). It was held that the Income-tax Officer was not justified in issuing the notices because there was no obvious or patent mistake. Even assuming that there was a mistake, the discovery of the same would require investigation and debate. Such course is not permissible in rectification proceeding. In that view of the matter, the notices were quashed and set aside."

Page 1217: sections 36(1)(vii) & 36(2):

At the end of the page, *add*,—

"*Legislative amendments.*—Sections 36(1)(vii) and 36(2) have been amended by the Finance Act, 1985, with effect from 1st April, 1985. The scope and effect of such amendments and amendment to section 36(1)(viiia) have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Deduction in respect of provisions made by banking companies for bad and doubtful debts.—17.1 Section 36(1)(vii) of the Income-tax Act provides for a deduction in the computation of taxable profits of the amount of any debt or part thereof which is established to have become a bad debt in the previous year. This allowance is subject to the fulfilment of the conditions specified in sub-section (2) of section 36.

17.2 Section 36(1)(viiia) of the Income-tax Act provides for a deduction in respect of any provision for bad and doubtful debts made by a scheduled bank or a non-scheduled bank in relation to advances made by its rural branches, of any amount not exceeding 1½ per cent. of the aggregate average advances made by such branches.

17.3 Having regard to the increasing social commitments of banks, section 36(1)(vii) has been amended to provide that in respect of any provision for bad and doubtful debts made by a scheduled bank [not being a bank approved by the Central Government for the purposes of section 36(1)(viii)] or a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding ten per cent. of the total income (computed before making any deduction under the new provision) or two per cent. of the aggregate average advances made by rural branches of such banks, whichever is higher, shall be allowed as a deduction in computing the taxable profits.

17.4 Section 36(1)(vii) of the Act has also been amended to provide that in the case of a bank to which section 36(1)(vii) applies, the amount of bad and doubtful debts shall be debited to the provision for bad and doubtful debts account and that the deduction admissible under section 36(1)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account.

17.5 Section 36(2) has been amended by insertion of a new clause (v) to provide that where a debt or a part of a debt considered bad or doubtful relates to advances made by a bank to which section 36(1)(vii) applies, no such deduction shall be allowed unless the bank has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under clause (vii) of section 36(1).".

Page 1218: sections 36(1)(vii) & 36(2):

At the end of paragraph titled "*Conditions for allowance of a bad debt*", add,—"*Also see, Sarangpur Cotton Mfg. Co. Ltd. v CIT, (1983) 143 ITR 166, 171 (Guj); CIT v Srivinayaga Pictures, (1986) 161 ITR 65 (Mad); G. P. Singhi v CIT, (1986) 158 ITR 782, 789 (Del).*".

Page 1220: sections 36(1)(vii) & 36(2):

In line 24 from top, after "120 ITR 792, 814 (Bom)", add,—"; *Sarangpur Cotton Mfg. Co. Ltd. v CIT, (1983) 143 ITR 166, 176 (Guj) [holding that mere passing of a decree in favour of the creditor does not necessarily indicate that there was a possibility of recovering the debt]*".

Page 1221: sections 36(1)(vii) & 36(2):

After line 3 from top, add,—

"In *G. P. Singhi v CIT [(1986) 158 ITR 782 (Del)]*, the assessee-firm had, in the year 1950, advanced a loan to a company on the mortgage of a property. In 1953, the assessee got the mortgaged property transferred to them in full settlement of the debt. In 1960, the assessee sold that property and suffered a loss, which they claimed as bad debt. It was held that the debt having been liquidated in 1953, there was no debt remaining in the year 1960 which could be allowed as bad debt."

Page 1221: sections 36(1)(vii) & 36(2):

At the end of paragraph titled "*II. The debt should be of a revenue nature*", *add*,—"Also see, *CIT v Sirpur Paper Mills*, (1983) 144 ITR 393, 394-5 (AP).".

Page 1222: sections 36(1)(vii) & 36(2):

At the end of line 25 from top, *add*,—"Also see, *CIT v Shaw Wallace & Co. Ltd.*, (1983) 143 ITR 207 (Cal).".

Page 1222: sections 36(1)(vii) & 36(2):

At the end of line 3 from the bottom, *add*,—"The above Andhra Pradesh view has been dissented from in *P. C. Dharmalinga Mudaliar v CIT* [(1985) 152 ITR 588, 591-2 (Mad)], where it has been held that by the use of the disjunctive word 'or' in section 36(2)(i)(a), no departure from the earlier state of the law has been intended by Parliament. Taking the provision in section 36(2)(i)(a) as a whole, it is necessary in every case to find if a debt in a money-lending or banking business or a debt in a non-money-lending or a non-banking business must have been incurred in the course of the assessee's business. The second limb is that in the case of non-money-lending or non-banking business, a debt in order to be a bad debt must have been taken into account in the computation of the income of the assessee. This particular requirement takes care to exclude what may be called capital debts from qualifying for write off as bad debts.".

Page 1223: sections 36(1)(vii) & 36(2):

Before line 5 from bottom, *add*,—

"In the facts of *Josna Bank Ltd. v CIT* [(1985) 151 ITR 473 (Ker)], it was held that after the amalgamation of the assessee-bank with the transferee-bank, the assessee-bank was not carrying on any business and as such it was not entitled to the deduction for the bad debt.".

Page 1225: sections 36(1)(vii) & 36(2):

At the end of the paragraphs titled "*Guarantor's outgoings becoming irrecoverable*", *add*,—

"In the facts of *CIT v T. N. Krishnaswami* [(1984) 150 ITR 365 (Mad)], it was found that the giving of the guarantee was not part of assessee's line of business nor was it closely interlinked with his business as a financier. Therefore, it was held that the guaranteed amount not recovered from the principal debtor was not allowable as bad debt.".

Page 1227: sections 36(1)(vii) & 36(2):

After line 26 from top, *add*,—

"The question as to when a debt becomes a bad debt is a question of fact. Simply because a debt has become barred by time or the debtor has gone in for insolvency, it cannot be said that the debt has become a bad debt. The age of the debt and the financial condition of the debtor are

no doubt relevant considerations but neither is conclusive on the question whether the debt has become a bad debt [*CIT v Johilla Coalfields Pr. Ltd.*, (1984) 146 ITR 276, 279 (MP)].

The opinion of the assessee as to whether a debt has become bad and when precisely the debt had become bad is not decisive for enabling the assessee to claim an allowance for bad debt. The Income-tax Officer must be satisfied on evidence that the debt had actually become bad during the relevant accounting year [*Chettinad Company Pr. Ltd. v CIT*, (1984) 147 ITR 724, 727 (Mad)].”.

Page 1228: sections 36(1)(vii) & 36(2):

After line 7 from top, *add*,—

“In the facts of *CIT v Rukmani Mills Ltd.* [(1984) 149 ITR 735 (Mad)], the debt was held to have become bad in the accounting year relevant to assessment year 1974-75, on the nationalisation of the debtor sick industry.

In *Maharajadhiraj Dr. Sir Kameshwar Singh of Dharbhanga v CIT* [(1987) 167 ITR 549 (Pat)], the judgment-debtor failed to pay the instalment due on 23-6-1949. The execution was finally dismissed by the High Court on 1-9-1959 on the ground that the judgment-debtor had no property out of which the decretal dues could have been realised. The assessee could have levied fresh execution by 23-6-1961. It was held that the debt became bad only on expiry of 23-6-1961 when the remedy for realisation of the debt became barred.”.

Page 1228: sections 36(1)(vii) & 36(2):

In line 9 of the paragraph titled “*Subsequent events and conduct of the assessee are relevant materials*”, after “120 ITR 792, 810-11 (Bom)”, *add*,—“; *Sarangpur Cotton Mfg. Co. Ltd. v CIT*, (1983) 143 ITR 166 (Guj)”.

Page 1229: sections 36(1)(vii) & 36(2):

At the end of paragraph titled “*Writing off—how to be made?*”, *add*,—

“Once the assessee has posted entries in the profit and loss account and corresponding entries are posted in the Bad Debt Reserve Account, that would also be sufficient compliance with the provisions of the statutory requirement for writing off as irrecoverable the concerned debt in the books of the assessee [*Sarangpur Cotton Mfg. Co. Ltd. v CIT*, (1983) 143 ITR 166, 173 (Guj)].”.

Page 1231: sections 36(1)(vii) & 36(2):

At the end of the page, in connection with “*Premature claim repeatable for a subsequent year*”, reference may also be made to *CIT v Darabji Bros. & Co.*, (1983) 143 ITR 778 (AP).

Page 1233: sections 36(1)(vii) & 36(2):

Lines 11 and 10 from bottom: The decision of the Andhra Pradesh High Court [102 ITR 604 (AP)] has been affirmed in *CIT v T. Veerabhadra Rao*,

K. Koteswara Rao & Co [(1985) 155 ITR 152 (SC)] holding that the successor-in-business can write off and claim deduction in respect of a bad debt. Also see, *CIT v Mineral & Metals Trading Corporation of India Ltd.*, (1986) 157 ITR 371 (Del).

Thus, claim for bad debt may be allowed in the hands of a reconstituted firm [*CIT v Oppoottil Agencies*, (1986) 160 ITR 120 (Ker)] or a transferee-company taking over the business of a firm [*Universal Radiators Ltd. v CIT*, (1985) 153 ITR 556 (Mad)] or a partnership taking over the business of a Hindu undivided family [*E. A. V. Krishnamurthy & Sons v CIT*, (1985) 152 ITR 640 (Mad)].

In such cases, the character of the debt does not undergo any change [*CIT v Johilla Coalfields Pr. Ltd.*, (1984) 146 ITR 276 (MP)].

Page 1235: sections 36(1)(vii) & 36(2):

In lines 6 and 7 from top, after “52 ITR 410 (Punj)”, add,—“; *CIT v Mathuralal Kapoorchand & Co.*, (1983) 141 ITR 297 (MP)” [holding that in case of insolvency of the debtor, the extent of the bad debt can be determined only on the declaration of final dividend by the liquidator or receiver].

Pages 1236-1237: sections 36(1)(vii) & 36(2):

After serial No. (11), giving illustrations of cases where the debts were held allowable as bad debts, add,—

“(12) Advance was made by the assessee, carrying on money-lending business, through transfer entries—debts becoming bad subsequently—held allowable [*CIT v Govindram Bros. Pr. Ltd.*, (1983) 141 ITR 777 (Bom)].

(13) Suit for recovery of debt was compromised at a lesser figure and the balance was given up and claimed as bad debt—claim upheld [*CIT v Darabji Bros. & Co.*, (1983) 143 ITR 778 (AP)].”.

Page 1238: sections 36(1)(vii) & 36(2):

After serial No. (11), giving illustrations of cases where the debts were held not allowable as bad debts, add,—

“(12) Assessee’s claim for bad debt of a loan given by him was held not allowable as the assessee was found to be not a money-lender [*K. J. Somaiya & Sons Pr. Ltd. v CIT*, (1985) 155 ITR 605 (Bom)].”.

Page 1238: sections 36(1)(vii) & 36(2):

On the point of “*Question of fact*”, reference may also be made to *CIT v Darabji Bros. & Co.*, (1983) 143 ITR 778 (AP); *CIT v Johilla Coalfields Pr. Ltd.*, (1984) 146 ITR 276 (MP); *Sat Parkash Ram Naranjan v CIT*, (1986) 158 ITR 781 (Punj); *CIT v Ganpat Rai Banarsi Das*, (1986) 159 ITR 837 (Punj); *CIT v Visnagar Taluka Mazdoor Sahakari Mandali Ltd.*, (1987) 163 ITR 224 (Guj); *CIT v Pratap Steel Rolling Mills*, (1986) 27 Taxman 413 (Punj); *CIT v Jaipur Mineral Development Syndicate Pr. Ltd.*, (1987) 31 Taxman 294 (Raj).

Page 1239: sections 36(1)(vii) & 36(2):

After line 2 from top, *add*,—

"If the Tribunal, after considering all the relevant facts, has arrived at a conclusion that the debt in question was to be considered to be bad, such a conclusion should not be interfered with by the High Court in a reference [*V. N. Rajan & Co. v CIT*, (1983) 142 ITR 545, 561-2 (Cal)].".

Page 1239: sections 36(1)(vii) & 36(2):

On the point of onus in case of a bad debt, reference may also be made to *V. N. Rajan & Co. v CIT* [(1983) 142 ITR 545 (Cal)]:

Page 1246: section 36(1)(viii):

After line 21 from top, *add*,—

"Further amendments.—Section 36(1)(viii) has also been amended by the Finance Act, 1985 [for the effect, see paragraphs 17.1 to 17.5 of the departmental circular No. 421, dated 12th June, 1985, reproduced at pages 6129-6130, *ante*].

The Income-tax (Amendment) Act, 1986 (26 of 1986), has also amended section 36(1)(viii). The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 464, dated 18th July, 1986, as under:—

'Modification in respect of deduction on provisions for bad and doubtful debts made by the banks.—5.1 Under the existing provisions of clause (viii) of sub-section (1) of section 36 of the Income-tax Act inserted by the Finance Act, 1979, provision for bad and doubtful debts made by a scheduled or a non-scheduled Indian bank is allowed as deduction within the prescribed limits. The limit prescribed is 10% of the total income or 2% of the aggregate average advances made by the rural branches of such banks, whichever is higher. It had been represented to the Government that the foreign banks were not entitled to any deduction under this provision and to that extent, they were being discriminated against. Further, it was felt that the existing ceiling in this regard, *i.e.*, 10% of the total income or 2% of the aggregate average advances made by the rural branches of Indian banks, whichever is higher, should be modified. Accordingly, by the Amending Act, the deduction presently available under clause (viii) of sub-section (1) of section 36 of the Income-tax Act has been split into two separate provisions. One of these limits the deduction to an amount not exceeding 2% of the aggregate average advances made by the rural branches of the banks concerned. It may be clarified that foreign banks do not have rural branches and hence this amendment will not be relevant in the case of the foreign banks. The other provision secures that a further deduction shall be allowed in respect of the provision for bad and doubtful debts *made by all banks, not just the banks incorporated in India*, limited to 5% of the total income (computed before making any deduction under this clause and Chapter VI-A). This will imply that all scheduled or non-scheduled banks having rural branches would be allowed the deduction up to 2% of

the aggregate average advances made by such branches and a further deduction up to 5% of their total income in respect of provision for bad and doubtful debts.”.

Page 1248: section 36(1)(viii):

After line 18 from top, *add*,—

“The Finance Act, 1985 (32 of 1985), has amended section 36(1)(viii). The scope and effect of such amendment, as also of the amendment to section 36(1)(viiiia), have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Modification of the provisions relating to deductions in respect of reserves in the case of financial corporations, notified banks, etc.—18.1 Financial corporations engaged in providing long-term finance for industrial or agricultural development in India or public companies providing long-term finance for construction or purchase of houses in India for residential purposes, are entitled to a deduction, in the computation of their taxable profits, of an amount not exceeding 40 per cent. of the total income carried to a special reserve. Under the existing provisions, the total income for this purpose is the total income as computed before making any deduction under Chapter VI-A. The Finance Act, 1985, provides that the deduction shall be of an amount not exceeding 40 per cent. of the total income as computed *before* making any deduction under the aforesaid provision and Chapter VI-A.

18.2 Under another provision, scheduled banks, other than foreign banks which are engaged in banking operations outside India and approved by the Central Government in this behalf are also entitled to a deduction up to 40 per cent. of their total income computed before making any deduction under Chapter VI-A carried by them to a reserve account. The Finance Act, 1985, provides that the deduction shall be of an amount not exceeding 40 per cent. of the total income as computed *before* making any deduction under the aforesaid provision and Chapter VI-A.

18.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’”.

Page 1249: section 36(1)(viii):

At the end of line 26 from top, *add*,—“For and from assessment year 1986-87, that Chapter VI-A comprises sections 80A to 80U. The total income for ascertaining the quantum of the special reserve to be created under section 36(1)(viii) has been held to mean that total income before deduction—

—under Chapter VI-A, and

—of the amount of the special reserve created under section 36(1)(viii)

[*CIT v Bihar State Financial Corporation*, (1983) 142 ITR 519 (Pat); *CIT v Bihar State Financial Corporation*, (1983) 142 ITR 518 (Pat), special leave petition granted by the Supreme Court: (1983) 140 ITR (St.) 2; *CIT v Bihar State Financial Corporation*, (1983) Taxation 70(3)-25 (Pat); *CIT v Bihar State Financial Corporation*, (1986) 159 ITR 275 (Pat); *CIT v M. P. State Financial Corporation*, (1986) 26 Taxman 268 (MP)].

The Finance Act, 1985, has amended the provisions of section 36(1)(viii) so as to give statutory recognition to the above rulings for and from assessment year 1985-86.”.

Page 1250: section 36(1)(viii):

After line 11 from top, *add*,—

“Section 36(1)(viii) has been amended by the Finance Act, 1985 (32 of 1985). The scope and effect of such amendment have been elaborated in paragraphs 18.2 and 18.3 of the departmental circular No. 421, dated 12th June, 1985, which have been reproduced at page 6135, *ante*.

Approved Scheduled Bank.—In exercise of the powers conferred by the proviso to clause (viii) of sub-section (1) of section 36 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby approves for the purposes of the said clause in respect of the assessment year commencing on and from the 1st day of April, 1983, and any subsequent year, the following scheduled banks, namely:—

- (i) State Bank of India;
- (ii) Bank of Baroda;
- (iii) Indian Overseas Bank;
- (iv) United Commercial Bank;
- (v) Punjab National Bank;
- (vi) Central Bank of India;
- (vii) Bank of India.

[*Notification No. S.O. 726(E), dated 19th September, 1984.*].”.

Page 1259: section 37:

Before line 5 from bottom, *add*,—

“**XIII.** *The Finance Act, 1983* (11 of 1983).—The scope and effect of the amendments made by this Act have been discussed at pages lxvi to lxxi of Vol. 4.

XIV. *The Finance Act, 1985* (32 of 1985).—The omission of the reference to section 80VV in section 37(1) was consequential to the omission by the same Act of section 80VV, with effect from 1st April, 1986. Further, this Act has omitted sub-sections (3A), (3B), (3C) and (3D) of section 37 with effect from 1st April, 1986.”.

Page 1260: section 37(1):

After line 9 from top, *add*,—

“Sections 37(1) and 80G are not mutually exclusive.—The basic requirements for invoking sections 37(1) and 80G are quite different, but nonetheless, the two sections are not mutually exclusive. If the contribution by an assessee is in the form of donations of the category specified under section 80G, but if it could also be termed as an expenditure of the category falling under section 37(1), then the right of the assessee to claim the whole of it as allowance under section 37(1) cannot be denied. But such a money must be ‘laid out or expended wholly and exclusively for the purpose of business’. The word ‘wholly’ refers to the quantum of expenditure and the word ‘exclusively’ refers to the motive, object or purpose of the expenditure.

There is yet one more thing to be remembered while applying section 37(1). The expenditure claimed therein need not be ‘necessarily’ spent by the assessee. It might be incurred ‘voluntarily’ and without any ‘necessity’, but it must be for promoting the business. In other words, if the expenditure has been incurred by the assessee voluntarily, even without necessity, but if it is for promoting the business, the deduction would be permissible under section 37(1) of the Act [*Mysore Kirloskar Ltd. v CIT*, (1987) 166 ITR 836, 842-43 (Karn)].”.

Pages 1260-1261: section 37(1):

On the point as to the implication of “*Expenditure*”, reference may also be made to *Maharaja Shri Umaid Mills v CIT*, (1984) 149 ITR 519 (Raj).

In *M.P. Financial Corporation v CIT* [(1987) 165 ITR 765, 770 (MP)], it has been opined that the expression “*expenditure*”, as used in section 37, may, in the circumstances of a particular case, cover an amount which is really a loss and the said amount has not gone out from the pockets of the assessee.

Pages 1261-1262: section 37(1):

On the point “*II. Not being expenditure of the nature described in sections 30 to 36. . . .*”, reference may also be made to *CIT v Forbes Ewart & Figgis (P.) Ltd* [(1982) 138 ITR 1 (Ker—FB), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 7].

Page 1273: section 37(1):

For a true test to be applied for distinguishing a capital expenditure from revenue expenditure, reference may also be made to—

- (1) *Bengal & Assam Investors Ltd. v CIT*, (1983) 142 ITR 156 (Cal);
- (2) *CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217, 236 (AP).

Page 1274: section 37(1):

On the subject "*Nature may vary from the stand-point of the payer and of the recipient*", reference may also be made to *Sukhbir Parshad v CIT*, (1983) 144 ITR 437 (Punj).

Page 1276: section 37(1):

For determining the nature of a particular expenditure, the manner of the payment is not relevant [*India Manufacturers (P.) Ltd. v CIT*, (1985) 155 ITR 770 (Mad)].

Page 1278: section 37(1):

At the end of serial No. (24), add,—"*Contra: Dollar Co. v CIT*, (1986) 161 ITR 455 (Mad).".

Page 1278: section 37(1):

After serial No. (29), giving illustrations of capital expenditure, add,—
“(30) Amount paid for purchase of land containing gypsum—sale held to be of land and not of gypsum alone [*CIT v S. Ramal Ammal*, (1982) 135 ITR 292 (Mad)].

(31) Expenditure on boring of a new tube-well which proved to be unsuccessful to the assessee [*CIT v Bazpur Co-operative Sugar Factory Ltd.*, (1983) 142 ITR 1 (All). Also see, *Fancy Corpn. Ltd. v CIT*, (1986) 162 ITR 827 (Bom)].

(32) Expenditure on replantation of tea bushes on leased land [*Debpara Tea Co. Ltd v CIT*, (1983) 143 ITR 947 (Cal)].

(33) Expenditure on construction of an airstrip on land taken on licence for ten years with an option for a further term of ten years [*Indian Explosives Ltd. v CIT*, (1984) 147 ITR 392 (Cal)].

(34) Expenditure incurred on construction of a shop on leased land [*CIT v Agrawal Trading Co.*, (1984) 149 ITR 222 (Bom)].

(35) Premium paid in instalments for obtaining a lease for 30 years [*CIT v Project Automobiles*, (1984) 150 ITR 266 (Bom)].

(36) Expenditure incurred in obtaining a feasibility report for setting up a shipyard, where the report was found not favourable for materialising [*CIT v Digvijay Cement Co. Ltd.* (1986) 159 ITR 253 (Guj)].

(37) Expenditure on purchase of furniture and racks [*Delhi Cloth & General Mills Co. Ltd. v Addl. CIT*, (1986) 160 ITR 857 (Del)].

(38) Amount paid by way of insurance premia for taking out insurance policy on the life of a partner with a view to secure liquid cash for paying off the legal representatives of the deceased partner [*CIT v Khodidas Motiram Panchal*, (1986) 161 ITR 99 (Guj)].

(39) Excess payment made on account of fluctuation in the exchange rate for repayment of loan raised for purchase of machinery abroad [*Union Carbide India Ltd. v CIT*, (1987) 165 ITR 558 (Cal); *CIT v Bharat General Textile Industries Ltd.*, (1986) 157 ITR 158 (Cal)]. Also see, *Tata Hydro Electric Power Supply Co. Ltd.*, (1987) 63 CTR (Bom) 244.

(40) Expenditure incurred on the purchase of a pump set and setting up the tram line [*R. J. Trivedi (HUF) v CIT*, (1987) 166 ITR 856 (MP)].

(41) Contribution made by the assessee to the Housing Board as a part of the cost of construction of residential quarters [*Cooper Engg. Ltd. v CIT*, (1987) Taxation 86(3)-16 (Bom)].

(42) Expenditure incurred for concreting the walls and roof underground for carrying out orders of mining authorities [*CIT v Karuna Mica Co.*, (1987) 167 ITR 292 (Pat)].

(43) Premium paid in annual instalments for obtaining a lease on permanent basis [*CIT v Project Automobiles*, (1987) 167 ITR 781 (MP)].

(44) Expenditure incurred in investigating into defects in fulfilment of the contract to erect plant and machinery and for seeking advice to rectify such defects [*CIT v Barium Chemicals Ltd.*, (1987) 168 ITR 164 (AP)].

Page 1280: section 37(1):

Serial No. (18): *CIT v Singareni Colliery Co. Ltd.*, (1980) 121 ITR 466 (AP) has been followed in *CIT v Hingir Rampur Coal Co. Ltd.*, (1983) 140 ITR 73 (Bom).

Page 1281: section 37(1):

After serial No. (42), giving illustrations of revenue expenditure, *add*,—
“(43) Payment made by the assessee for what it had utilised in its own business as its stock-in-trade [*Addl. CIT v SM. M. Muthappa Chettiar*, (1983) 139 ITR 396 (Mad)].

(44) Expenditure incurred in providing carpets and screens for a cinema theatre [*CIT v Metal & Metallurgical Corpn.*, (1983) 141 ITR 40 (Mad)].

(45) Amount paid by the assessee-firm to its retiring partner on account of estimated profits on the raw materials in stock or to be acquired against quota rights and import licence of the firm [*Sukhbir Parshad v CIT*, (1983) 144 ITR 437 (Punj)].

(46) Erection charges incurred by an assessee at the site where the work was executed [*CIT v Hind Construction & Engg. Co. Ltd.*, (1984) 147 ITR 513 (Cal)].

(47) Expenditure incurred in making payment to Electricity Board for laying service lines, etc. [*CIT v Panbari Tea Co. Ltd.*, (1985) 151 ITR 726 (Punj)].

(48) Brokerage paid on sale of old machinery [*Premier Mills Ltd. v CIT*, (1985) 152 ITR 457 (Mad)].

(49) Expenditure incurred in installation of poles and laying of additional power lines [*CIT v Anand Gum Industries*, (1985) 154 ITR 680 (Raj)].

(50) Amount paid by way of consultancy fees for improving quality of products [*CIT v Praga Tools Ltd.*, (1986) 157 ITR 282 (AP)].

(51) Amount paid to another person for setting up plant and machinery and rendering services—part held to be of revenue nature [*CIT v Binny & Co.*, (1986) 159 ITR 303 (Mad)].

(52) Expenditure incurred in order to enable the assessee to prospect and search for its stock-in-trade or raw material [*Hindustan Aluminium Corpn. Ltd. v CIT*, (1986) 159 ITR 673 (Cal)].

(53) Expenditure incurred in constructing loft inside the office premises for providing adequate accommodation to staff [*CIT v Mehta Transport Co.*, (1986) 160 ITR 35 (Guj)].

(54) Expenditure on electric fittings in retail cloth depots [*Delhi Cloth & General Mills Co. Ltd. v Addl. CIT*, (1986) 160 ITR 857 (Del)].

(55) Internal development expenses where the Tribunal found that the expenditure related to assessee's business [*CIT v Indian Copper Corpn. Ltd.*, (1986) 161 ITR 327 (Pat); *CIT v Indian Copper Corpn. Ltd.*, (1986) 162 ITR 905 (Pat)].

(56) Expenditure incurred by an assessee, whose object was promotion and operation of schemes for industrial development in getting project and feasibility reports [*CIT v Karnataka State Industrial & Investment Development Corpn.*, (1987) 163 ITR 657 (Karn)].

(57) Expenditure incurred in repairing hutments; expenditure on pipe and drain cuttings [*R. J. Trivedi (HUF) v CIT*, (1987) 166 ITR 856 (MP)].

(58) Expenditure incurred on the fault-stone cutting operations for removing obstruction in the course of mining operations [*R. J. Trivedi (HUF) v CIT*, (1987) 166 ITR 856 (MP)].

(59) Expenditure incurred on replacement of old electric wiring [*CIT v Eagle Theatres*, (1987) Taxation 85(3)-309 (Del)].

(60) Expenditure incurred on replacing petrol engines with the diesel engines in view of the steep rise in the price of petrol as compared to that of diesel [*CIT v Polyolefins Industries Ltd.*, (1987) Taxation 86(3)-90 (Bom)].”.

Page 1281: section 37(1):

At the end of the paragraph titled “IV. *Not being in the nature of personal expenses of the assessee*”, add,—

“In *B. M. S. (Pr.) Ltd. v CIT* [(1985) 153 ITR 758 (Mad), special leave petition dismissed by the Supreme Court: (1986) 161 ITR (St.) 132], certain disputes arose between two groups in the management of the company. These disputes were settled through an arbitration award, where, under one group took over the management and the amount due from the other group was written off in the books of the company. It was held that the amount so written off should be treated as the personal expenses of the taking-over group and not business expenditure of the assessee-company.”.

Page 1282: section 37(1):

At the end of the paragraphs titled “V. *Laid out or expended—During the year*”, add,—

“Also see, *CIT v Associated Electrical Industries (India) Pr. Ltd.*, (1986) 157 ITR 72 (SC); *CIT v Rajendra Trading Co. P. Ltd.*, (1984)

146 ITR 637 (Cal); *Addl. CIT v Madras Radiators and Pressings*, (1984) 148 ITR 396 (Mad); *CIT v Kumar Bros.*, (1987) 168 ITR 206 (MP). Cf. *Belapur Sugar & Allied Industries Ltd. v State of Maharashtra*, (1987) 165 ITR 27 (Bom); *Addl. CIT v SM. M. Muthappa Chettiar*, (1983) 139 ITR 396 (Mad).

In the facts of *CIT v Colour Films Distributors* [(1987) 165 ITR 511 (Cal)], the assessee-distributor was held entitled to claim deduction for expenditure on publicity at actuals for the year concerned and not for the entire amount as per agreement for ten years together.”.

Page 1282: section 37(1):

On the subject “*Mercantile system of account, effect of*”, reference may also be made to *CIT v Chanchani Bros. (Contractors) Pr. Ltd.*, (1986) 161 ITR 418 (Pat).

Pages 1283-1284: section 37(1):

On the subject “*Provision and reserve—treatment of*”, reference may also be made to *CIT v Sijua (Jharriah) Electric Supply Co. Ltd.*, (1984) 145 ITR 740 (Cal) [holding that amount appropriated towards ‘Reserve for contingencies’ under the Electricity Supply Act was not a provision but a reserve for meeting future unknown liability and, therefore, not allowable as a deduction].

Pages 1284-1285: section 37(1):

At the end of paragraph titled “*Statutory liability and contractual liability—accrual of*”, add,—

“As to the accrual of statutory liability, reference may also be made to *CIT v Shri Sarvaraya Sugars Ltd.*, (1987) 163 ITR 429 (AP). As regards accrual of contractual liability, reference may also be made to *CIT v Phalton Sugar Works Ltd.*, (1986) 162 ITR 622 (Bom).

It may be noted that for and from assessment year 1984-85, the statutory liabilities covered by section 43B are allowed not merely on accrual basis but only upon actual payment basis.”.

Page 1285: section 37(1):

On the subject “*Liability flowing from the arbitrator's award—accrual of*”, reference may also be made to *CIT v Amritsar Sugar Mills Ltd.*, (1983) 142 ITR 32 (Punj); *Fazilka Electric Supply Co. Ltd. v CIT*, (1983) 143 ITR 551 (Del).

Page 1285: section 37(1):

As to the allowability of the estimated liability, reference may also be made to *CIT v Nav Bharat Nirman Pr. Ltd.*, (1983) 141 ITR 723 (Del) and *CIT v Indian Copper Corporation Ltd.*, (1986) 161 ITR 327 (Pat).

Page 1286: section 37(1):

On the subject “*Disputed liability—allowability of*”, reference may also

be made to *CIT v Guranditta Mal Shanti Parkash Zira*, (1987) 164 ITR 774 (Punj); *CIT v Tata Chemicals Ltd.*, (1986) Taxation 82(3)-236 (Bom).

It may be noted that for and from assessment year 1984-85, disputed statutory liability is not allowable unless it crosses the bar of section 43B.

Page 1286: section 37(1):

On the subject "*Entries in books, whether essential for allowability?*", reference may also be made to *Addl. CIT v Buckau Wolf New India Engg. Works Ltd.*, (1986) 157 ITR 751 (Bom).

Page 1286: section 37(1):

Before the paragraph titled "*Allowability of a liability of a past year*", add,—

"*Reopening of accounts not permissible.*—The system of reopening of accounts does not fit in with the scheme of the Income-tax Act. As far as receipts are concerned, there can be no reopening of accounts and the position is the same in respect of expenses [*CIT v Karamchand Premchand Pr. Ltd.*, (1985) 152 ITR 94 (Guj)].".

Page 1287: section 37(1):

At the end of the paragraph titled "*Liability in praesenti and liability de futuro distinction between*", after "(1976) CTR (Pat) 227, 236-7", add,—"; *CIT v Instrumentation Ltd.*, (1987) 167 ITR 354 (Raj)".

Page 1288: section 37(1):

On the subject "*Expenditure for contingent liability not allowable*", reference may also be made to *Shree Sajjan Mills Ltd. v CIT*, (1985) 156 ITR 585 (SC).

Page 1289: section 37(1):

Before the paragraph titled "*Illustrations*", add,—

"*No double deduction.*—Where a deduction has already been allowed in an earlier year on the basis of accrual to a person following mercantile system of accounting, no deduction can again be allowed on the basis of actual payment [*CIT v Oil India Ltd.*, (1983) 143 ITR 848 (Cal)].".

Page 1291: section 37(1):

After line 21 from top, add,—

"*Other illustrative cases about accrual of liability.*—(1) *CIT v International Combustion (I) Pr. Ltd.*, (1982) 137 ITR 184 (Cal); *CIT v E. W. Stevens Co. Ltd.*, (1986) 158 ITR 235 (Cal) [Additional liability due to devaluation of Indian rupee was held accrued in the year of devaluation]. But see *CIT v U. B. S. Publishers & Distributors*, (1984) 148 ITR 114 (All); *Lakshmi Card Clothing Mfg. Co. P. Ltd. v CIT*, (1984) 149 ITR 716 (Mad).

(2) *CIT v Patnaik & Co. Pr. Ltd.*, (1983) 140 ITR 204 (Ori) [Liability to pay interest was held to have accrued when the assessee became aware of that liability on a suit having been filed for the execution of the decree].

(3) *CIT v O. P. N. Arunachala Nadar*, (1983) 141 ITR 620 (Mad) [Mesne profits for earlier years held accrued in the year of passing of the decree by the court].

(4) *CIT v Jatia Mfg. Investment Co. Pr. Ltd.*, (1983) 142 ITR 536 (Cal) [Negotiations for waiver or remission of interest for a year started before the end of the year—liability accrues only in the year in which the final intimation from the creditor was received].

(5) *CIT v Sarabhai Sons Ltd.*, (1983) 143 ITR 473 (Guj) [Remuneration to a managing director was held accrued in the year in which services were rendered and not in the subsequent year in which a special resolution in that regard was passed].

But in the facts of *CIT v Karamchand Premchand Pr. Ltd* [(1985) 152 ITR 94 (Guj)], the remuneration to directors for extra services rendered by them was held accrued in the year in which the resolution therefor was passed.

(6) *Addl. CIT v M. P. Sugar Mills Pr. Ltd.*, (1984) 148 ITR 203 (All) [Additional price of sugarcane was held accrued in the year of purchase of the sugarcane]. Also see, *CIT v Shri Sarvaraya Sugars Ltd.*, (1987) 163 ITR 429 (AP).

(7) *CIT v North West Coal Ltd.*, (1987) 167 ITR 419 (Cal) [Proposal for foregoing of accrued income made during the accounting year—acceptance on the first day of the next year—amount foregone held deductible for the said first year].

(8) *Armour Co-operative Marketing Society v CIT*, (1987) 167 ITR 565 (AP) [Liability to pay bonus to the cultivators to encourage them to grow maize was held accrued in the year wherein the resolution to that effect was passed by the society in its general body meeting].

(9) *Shalimar Chemical Works Pr. Ltd. v CIT*, (1987) 167 ITR 13 (Cal) [Statutory liability to make contribution under the Employees' State Insurance Act, 1948, was held becoming real and enforceable only after the decision of the High Court upholding the validity of the extension of that Act so as to cover the assessee's case also].

Also see, *Addl. CIT v SM. M. Muthappa Chettiar*, (1983) 139 ITR 396 (Mad).”.

Page 1299: section 37(1):

Before the paragraphs titled “Positive and negative tests”, add,—

“Commercial expediency—illustrative cases.—In the facts of the following cases, the expenditure incurred was held allowable on the ground of commercial expediency:—

(1) *Indian Leaf Tobacco Development Co. Ltd. v CIT*, (1982) 137

- ITR 827 (Cal) [*ex-gratia* payments to the dependants of former employees].
- (2) *ITAT v B. Hill & Co. P. Ltd.*, (1983) 142 ITR 185 (All) [expenditure on repairing and reconstructing roof, etc., of factory premises and residential quarters of the managing director].
 - (3) *CIT v Shriram Prayagdas & Mahadeo Prasad*, (1983) 144 ITR 883 (MP) [payment of tax arrears of the predecessor-in-business].
 - (4) *CIT v Gwalior Sugar Co. Ltd.*, (1984) 150 ITR 320 (MP) [foregoing interest on loans to raw material suppliers].
 - (5) *Kashiram Radhakishan v CIT*, (1985) 155 ITR 609 (Raj) [pressing charges paid at a higher rate].
 - (6) *CIT v North West Coal Ltd.*, (1987) 167 ITR 419 (Cal) [foregoing of hire charges recoverable from a contractor].
 - (7) *Turner Morrison & Co. Ltd. v CIT*, (1987) 167 ITR 844 (Cal) [remuneration to an agent].
 - (8) *Catalysts & Chemicals India (West Asia) Ltd. v CIT*, (1987) 166 ITR 769 (Ker) [amount of freight, etc., paid for goods imported by a third party with whom the assessee has business transactions].

On the other hand, in the facts of the following cases, commercial expediency was found not existing so as to allow deduction:—

- (1) *Smt. Sushila Devi Rampuria v CIT*, (1982) 137 ITR 272 (Cal) [foregoing of interest as also non-charge of interest].
- (2) *D. L. F. Housing & Construction Pr. Ltd. v CIT*, (1983) 141 ITR 806 (Del), special leave petition granted by Supreme Court: (1984) 149 ITR (St.) 130 [expenditure on renovation and reconstruction of a house let out to the managing director].
- (3) *Rambilas Chandram v CIT*, (1985) 156 ITR 344 (Raj) [salary paid for looking after another firm with which the assessee-firm had no business connection].
- (4) *Pratap Cotton Trading Co. v CIT*, (1986) 159 ITR 926 (Raj) [hotel expenses].
- (5) *CIT v National Rayon Corpn. Ltd.*, (1984) 17 Taxman 352 (Bom) [brokerage paid].”

Page 1302: section 37(1):

On the subject “*Allowability depending on the construction of an agreement, etc.*”, reference may also be made to *CIT v S. Ramal Ammal*, (1982) 135 ITR 292 (Mad).

Page 1302: section 37(1):

At the end of the paragraph titled “*Go-behind a written agreement possible*”, add,—“Also see, *CIT v Central India Machinery Mfg. Co. Ltd.*, (1985) 45 CTR (MP) 126.”.

Page 1306: section 37(1):

On the subject “*Mere relationship is no bar*”, reference may also be made to *Ganga Saran & Sons Pr. Ltd. v ITO*, (1981) 130 ITR 1, 12-3 (SC).

Page 1307: section 37(1):

On the subject "*Expenditure of newly set-up business*", reference may also be made to—

- (1) *CIT v Incheck Tyres Ltd.*, (1983) 141 ITR 937 (Cal) [cost of raw materials held allowable because the business was set-up before the commercial production commenced].
- (2) *V. Ramakrishna & Sons Ltd. v CIT*, (1984) 149 ITR 554 (Mad) [expenses incurred subsequent to the trial run of the factory—held allowable].
- (3) *K. Sampat Kumar v CIT*, (1986) 158 ITR 25 (Mad) [mere purchase and erection of the machinery do not amount to commencement of business].
- (4) *CIT v Kanoria General Dealers Pr. Ltd.*, (1986) 159 ITR 524 (Cal) [expenditure incurred after setting up business held allowable even though commercial production did not commence].

Also see, *CIT v Blaze Advertising (Delhi) Pr. Ltd.*, (1983) 143 ITR 421 (Del).

Pages 1307-1308: section 37(1):

On the subject "*Two or more businesses*", reference may also be made

- (1) *CIT v Chillidhari Tea Co. Ltd.*, (1983) 141 ITR 517 (Cal) [business of growing and manufacturing tea and that of raising paddy and other crop were held to constitute one single business—entire indirect expenses held deductible].
- (2) *CIT v Blue Mountain Estates & Industries Ltd.*, (1985) 151 ITR 616 (Mad) [different lines of business carried on by an assessee—held not constituting same business]. Also see, *CIT v K. Ravindranathan Nair*, (1985) 152 ITR 138 (Ker).

Also see, *CIT v Bharat Electronics Ltd.*, SLP (Civil) No. 10768 of 1981: (1984) 146 ITR (St.) 7 (SC).

Pages 1308-1309: section 37(1):

On the subject "*Expenditure in respect of stopped or discontinued business*", reference may also be made to—

- (1) *Binani Printers Pr. Ltd. v CIT*, (1983) 143 ITR 338 (Cal) [expenditure in relation to a closed business held not deductible from income of another business belonging to the assessee].
- (2) *Narayandas Kishandutt v CIT*, (1984) 149 ITR 636 (MP) [business carried on at head office as also at several branches—expenditure for maintaining certain closed branches—held deductible].
- (3) *CIT v Nazeena Traders Pr. Ltd.*, (1987) 165 ITR 405 (Mad) [different businesses carried on—one of them closed down—expenditure in relation to closed business held deductible because

different businesses were constituting one and the same business].

(4) *Perfect Pottery Co. Ltd. v CIT*, (1987) 166 ITR 196 (MP) [expenditure in relation to closed business held not allowable from the income of the continued business].

(5) *CIT v Kar Valves Ltd.*, (1987) 168 ITR 416 (Ker) [expenditure of a discontinued business cannot be allowed merely because deemed profits under section 41(2) in relation to such business are taxed in the relevant assessment year].

Also see, *CIT v Sharda Talkies*, (1984) 146 ITR 133 (MP); *Rajkumar Oil Mills Pr. Ltd. v CIT*, (1982) 28 CTR (MP) 48; *CIT v Pierce Leslie & Co. Ltd.*, (1984) 19 Taxman 273 (Mad).

Page 1309: section 37(1):

After line 3 from top, *add*,—

“No set-off available against out-of-books expenditure estimated in an earlier year.—Where in an earlier year, it is found that an expenditure has been incurred in excess of the amount shown in the books of account and such excess expenditure is estimated and treated as income from other sources, it is not possible to contend in a subsequent year that out-of-books expenditure for the subsequent year came out from the addition made in the earlier year [see, *CIT v R. R. Pictures*, (1984) 147 ITR 150 (Mad)].”.

“Expenses on predecessor’s business.—Where a business is succeeded to by another person, the expenditure incurred by the successor-in-business may be allowed as a proper deduction [see, *CIT v T. Veerabhadra Rao, K. Koteswara Rao & Co.*, (1985) 155 ITR 152 (SC); *CIT v Bharat Earth Movers Ltd.*, (1985) 155 ITR 321 (Karn)].”.

Page 1309: section 37(1):

After the paragraphs titled *“Illegality or impropriety of the expenditure may not debar”*, *add*,—

“If a business is a lawful one, any loss arising from, or any payment made in pursuance of, an illegal transaction cannot be set off against the income, profits or gains arising from the business, because infraction of law is not a normal incident of business. Therefore, any loss or other payment made on account of such infraction cannot be treated as incidental to business. The payments made by the assessee in such cases must be said to have been incurred in some character other than that of a trader. Further, a thing done in violation of law and which is visited with penalty cannot, on grounds of public policy, be said to be commercial expense. In this context, no distinction can be drawn between the amounts paid by way of penalties and fines and the payments made in pursuance of an illegal transaction. If, however, the whole business itself is illegal, then the illegal payments, penalties and other fines incurred in connection with such business are deductible [*CIT v Maddi Venkataratnam & Co. Pr. Ltd.*, (1983) 144 ITR 373 (AP)].”.

Pages 1309-1310: section 37(1):

On the subject "*How far a question of fact*", reference may also be made to *CIT v Carborandum Universal Ltd.*, (1985) 156 ITR 1 (Mad); *CIT v Ishwar Prakash & Bros.*, (1986) 159 ITR 843 (Punj); *CIT v Patnaik & Co. Pr. Ltd.*, (1983) 140 ITR 204 (Ori); *Bhilai Motors v CIT*, (1984) Taxation 73(3)-155 (MP); *CIT v Indian Textile Paper Tube Co. Ltd.*, (1985) 153 ITR 585 (Mad); *CIT v R. G. Govan & Co.*, (1984) 43 CTR (Del) 286; *CIT v Central India Machinery Mfg. Co. Ltd.*, (1985) 45 CTR (MP) 126; *CIT v Skyline Industries Pr. Ltd.*, (1985) 23 Taxman 553 (MP); *CIT v Kumar Bros.*, (1987) 168 ITR 206 (MP); *CIT v Orissa Cement Ltd.*, (1987) Tax LR 1192 (Ori).

Page 1310: section 37(1):

At the end of line 9 from top, *add*,—"A finding recorded by the Tribunal is binding on the High Court [*Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1983) 141 ITR 664 (All)].".

Page 1311: section 37(1):

On the subject "*How far a question of law*", reference may also be made to *Gwalior Rayon Silk Mfg. Co. v CIT*, (1985) 151 ITR 148 (MP); *Sambar Salts Ltd. v CIT*, (1984) 17 Taxman 277 (Raj); *CIT v J. K. Synthetics Ltd.*, (1985) 22 Taxman 260 (All); *CIT v Instrumentation Ltd.*, (1987) 167 ITR 354 (Raj); *CIT v Bharat Commerce & Industries Ltd.*, (1987) 63 CTR (Del) 334; *Hindustan Electro Graphites Ltd. v CIT*, (1987) Taxation 87(3)-33 (MP).

Page 1312: section 37(1):

After the paragraph titled "*Different questions*", *add*,—

"*What the High Court can or cannot do?*—The question in respect of which the Tribunal has recorded that no argument was raised before it, cannot be raised before the High Court nor can the High Court direct the Tribunal to deal with such question [*Western India Paper & Board Mills v CIT*, (1982) 137 ITR 525 (Bom)].".

Page 1312: section 37(1):

On the subject "*Onus*", in regard to the allowability of business expenditure, reference may also be made to *Goodlas Nerolac Paints Ltd. v CIT*, (1982) 137 ITR 58 (Bom); *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1983) 141 ITR 664 (All); *CIT v Ramdas Ramlal*, (1984) 149 ITR 256 (MP).

Page 1314: section 37(1):

Before line 10 from bottom, *add*,—

"In *CIT v Jalan Trading Co. Pr. Ltd* [(1985) 155 ITR 536 (SC)], it has been observed that the tests indicated by the Supreme Court in *Travancore Sugars & Chemicals Ltd.*'s case [(1973) 88 ITR 1 (SC)] were not intended

to be of general application but were given to bring into bold relief the special aspects of the case. In *Jalan Trading Co.'s* case [(1985) 155 ITR 536 (SC)], the assessee was a new company and it had no other business. Under a deed of assignment, it acquired the right to carry on the business of sole selling agency on a long term basis subject to the renewal of the agreement, stipulating to pay 75 per cent. of its annual net profits. It was held that the expenditure was made for the initial outlay and a capital asset was acquired thereby. As the expenditure related to the acquisition of a capital asset, it was of capital nature and not admissible as a deduction.

However, in *Kirloskar Pneumatic Co. Ltd. v CIT* [(1985) 151 ITR 484 (Bom)], applying the decision in *Travancore Sugar & Chemical's* case [(1966) 62 ITR 566 (SC)], it has been held that the royalty paid by the assessee at 1 per cent. of the net proceeds on sale of goods licence wherefor for 12 years was procured on that condition, was held to be of revenue nature and, therefore, allowable as a deduction.”.

Page 1315: section 37(1):

At the end of the paragraph titled “*Payment for or towards goodwill*”, add,—

“In *CIT v Dharampal Shantisarup* [(1986) 162 ITR 134 (Punj)], the amount paid for user of goodwill was held to be of revenue nature allowable as a deduction.

However, amount paid for acquiring goodwill itself was held to be of capital nature [*CIT v G. D. Naidu*, (1987) 165 ITR 63 (Mad)].

Similarly, the amount paid to the outgoing partners towards their share in goodwill by the remaining partners who reconstituted the firm was held to be of capital nature [*CIT v Purandass Ranchoddas & Sons*, (1987) 32 Taxman 123 (AP)].”.

Page 1317: section 37(1):

After serial No. (10), giving illustrative cases where the expenditure was held to be allowable, add,—

“(11) Registration fees, stamp duty and solicitor's fees in connection with the drawing up of a lease deed for a 20-year period [*CIT v Cinceita Pr. Ltd.*, (1982) 137 ITR 652 (Bom) (following illustrations No. (7) and (9) above). Also see, *CIT v Bank of India*, (1987) 32 Taxman 462 (Bom); *Richardson Hindustan Ltd. v CIT*, (1987) 63 CTR (Bom) 16.

(12) Amount paid for exploitation of the trade-mark [*CIT v M. B. Umbrella Industries*, (1984) 145 ITR 292 (MP); *CIT v M. B. Umbrella Factory Industries*, (1984) Taxation 75(1)-17 (MP)].

(13) Amount paid for acquiring import entitlements for raw material even though such entitlements were not used during the year [*CIT v Kusum Products Ltd.*, (1984) 149 ITR 250 (Cal)].

(14) Amount spent on demolition and reconstruction of a long leasehold business premises [*CIT v Madras Auto Service Ltd.*, (1985) 156 ITR 740 (Mad)].”.

Page 1318: section 37(1):

After serial No. (11), giving the illustrative cases where the expenditure was held not allowable, *add,—*

“(12) Expenditure incurred on acquisition of right of distribution of certain products for a period of 5 years even though the amount was paid in monthly instalments [*India Manufacturers Pr. Ltd. v CIT*, (1985) 155 ITR 770 (Mad); *India Manufacturers (Madras) P. Ltd. v CIT*, (1985) 155 ITR 774 (Mad)].

(13) Expenditure incurred by way of stamp, registration fee and legal expenses for the registration of a lease deed for a period of 10 years [*Hotel Rajmahal v CIT*, (1985) 152 ITR 218 (Karn)].

(14) Amount spent on construction of cinema hall and installation of plant and machinery [*Golcha Properties Pr. Ltd. v CIT*, (1987) 166 ITR 259 (Raj)].

(15) Legal fees and other expenses incurred for obtaining leases of office premises for 15 to 20 years [*Mather & Platt (India) Ltd. v CIT*, (1987) 33 Taxman 183 (Cal)].”.

Page 1320: section 37(1):

At the end of the paragraph titled “*Technical know-how, etc., where these are ‘plant’*”, *add,—*

“In *Scientific Engineering House Pr. Ltd. v CIT* [(1986) 157 ITR 86 (SC)], the technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature was held to constitute ‘plant’ within the definition of that expression in section 43(3). Also see, *Scientific Engineering House Pr. Ltd. v CIT*, (1984) 148 ITR 171 (AP); *CIT v Polyformalin Pr. Ltd.*, (1986) 161 ITR 36 (Ker).”.

Page 1323: section 37(1):

After serial No. 16, giving illustrative cases where expenditure in respect of collaboration agreement was held to be of revenue nature, *add,—*

- “17. *M. R. Electronics Components Ltd.*, (1982) 136 ITR 305 (Mad) [only 75% allowed, 25% not allowed]. Also see, *CIT v Southern Switchgear Ltd.*, (1984) 148 ITR 272 (Mad).
18. *CIT v Sundaram Clayton Ltd.*, (1982) 136 ITR 315 (Mad).
19. *Triveni Engineering Works Ltd. v CIT*, (1982) 136 ITR 340 (Del).
20. *Addl. CIT v Shama Engine Valves Ltd.*, (1982) 138 ITR 216 (Del).
21. *CIT v Wheels (India) Ltd.*, (1983) 141 ITR 745 (Mad).
22. *CIT v Wheels (India) Ltd.*, (1983) 141 ITR 748 (Mad).
23. *CIT v Tata Yadogawa Ltd.*, (1983) 142 ITR 30 (Pat).
24. *CIT v Wavin India Ltd.*, (1983) 143 ITR 281 (Mad).
25. *Hindustan Aluminium Corpn. Ltd. v CIT*, (1983) 144 ITR 474 (Cal).
26. *CIT v Madras Rubber Factory Ltd.*, (1983) 144 ITR 678 (Mad).

27. *CIT v Wyman Gordon (India) Ltd.*, (1983) 144 ITR 911 (Bom).
28. *CIT v Madras Rubber Factory Ltd.*, (1984) 146 ITR 604 (Mad).
29. *CIT v Bajaj Electricals Ltd.*, (1984) 148 ITR 83 (Bom).
30. *Coromandel Fertilizers Ltd. v CIT*, (1984) 148 ITR 546 (AP).
31. *CIT v Madras Rubber Factory Ltd.*, (1984) 149 ITR 405 (Mad).
32. *CIT v Madras Rubber Factory Ltd.*, (1984) 149 ITR 411 (Mad).
33. *Crescent Capacitors v CIT*, (1984) 149 ITR 285 (Del).
34. *CIT v Steel Plant Pr. Ltd.*, (1984) 149 ITR 294 (Bom).
35. *CIT v Lakshmi Card Clothing Mfg. Co. Pr. Ltd.*, (1984) 149 ITR 712 (Mad).
36. *Lakshmi Card Clothing Mfg. Co. Pr. Ltd. v CIT*, (1984) 149 ITR 716 (Mad).
37. *Premier Automobiles Ltd. v CIT*, (1984) 150 ITR 28 (Bom).
38. *CIT v Hyderabad Asbestos Cement Products Ltd.*, (1984) 150 ITR 517 (AP).
39. *Permal Wallace Ltd. v CIT*, (1985) 151 ITR 43 (MP).
40. *Kirloskar Pneumatic Co. Ltd. v CIT*, (1985) 151 ITR 484 (Bom).
41. *CIT v Sundaram Clayton Ltd.*, (1985) 152 ITR 487 (Mad).
42. *CIT v Bharat Earth Movers Ltd.*, (1985) 155 ITR 321 (Karn).
43. *Addl. CIT v Buckau Wolf New India Engg. Works Ltd.*, (1986) 157 ITR 751 (Bom).
44. *CIT v Kirloskar Oil Engines Ltd.*, (1986) 157 ITR 762 (Bom).
45. *CIT v Bhai Sunder Dass & Sons Pr. Ltd.*, (1986) 158 ITR 195 (Del).
46. *CIT v Sudarshan Chemical Industries Pr. Ltd.*, (1986) 159 ITR 629 (Bom).
47. *CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217 (AP).
48. *CIT v Borosil Glass Works Ltd.*, (1986) 161 ITR 286 (Bom).
49. *CIT v Kirloskar Pneumatic Co. Ltd.*, (1987) 163 ITR 560 (Bom).
50. *CIT v Indian Standard Metal Co. Ltd.*, (1987) 163 ITR 763 (Bom).
51. *Gannon Norton Metal Diamond Dies Ltd. v CIT*, (1987) 163 ITR 606 (Bom).
52. *Electro Medicals v CIT*, (1987) 163 ITR 807 (MP).
53. *CIT v British India Corporation Ltd.*, (1987) 165 ITR 51 (SC), affirming *British India Corpn. Ltd. v CIT*, (1973) 89 ITR 138 (All).
54. *Tata Robins Frazer Ltd. v CIT*, (1987) 165 ITR 347 (Pat).
55. *CIT v Kirloskar Bros. Ltd.*, (1983) 37 CTR (Bom) 12.
56. *CIT v Sundaram Clayton Ltd.*, (1984) 39 CTR (Mad) 17.
57. *CIT v Binny & Co.*, (1986) 27 Taxman 362 (Mad) [20% held to be revenue, and 80% capital expenditure].
58. *CIT v Nippon Electronics (India) Pr. Ltd.*, (1982) Tax LR 735 (Karn).
59. *CIT v B. N. Elias & Co. (P.) Ltd.*, (1987) 168 ITR 190 (Cal).

60. *Cooper Engg. Ltd. v CIT*, (1987) Taxation 86(3)-16 (Bom).
Also see, *CIT v Schlumberger Seaco Ltd.*, (1983) 142 ITR 540 (Cal)."

Page 1324: section 37(1):

After line 5 from top, dealing with illustrative cases where expenditure in respect of collaboration agreement was held to be of capital nature, *add,—*

"(4) The assessee-company issued shares to a foreign company for supply of technical know-how to it at the floatation stage. It was held that there was no expenditure in the trading sense, nothing was allowable [*CIT v Eimco-K. C. P. Ltd.*, (1984) 147 ITR 603 (Mad)].

Also see, *Transformer & Swichgear Ltd. v CIT*, (1983) 36 CTR (Mad) 269.

New section 35AB.—Section 35AB has been newly inserted by the Finance Act, 1985, with effect from 1st April, 1986, making provision for amortization of lump sum consideration paid for acquiring any know-how, as defined in the *Explanation* to that section.

It may be noted that section 180A, also inserted by the Finance Act, 1985, with effect from 1st April, 1986, enacts special provisions for tax-treatment of the lump sum consideration received or receivable by a resident individual who took more than twelve months in developing such know-how."

Page 1324: section 37(1):

After the paragraph titled "*Consultancy fees*", *add,—*

"In *CIT v Praga Tools Ltd* [(1985) Taxation 78(3)-176 (AP)], amounts paid to the consultancy firms were held to be of revenue nature."

Page 1325: section 37(1):

At the end of the paragraph titled "*Expenses on getting technicians foreign-trained for running an existing business with improved technique*", *add,—*

"In *Hindusthan Aluminium Corporation Ltd. v CIT* [(1986) 159 ITR 673 (Cal)], expenditure incurred on practical training in U.S.A. of employees was held to be of revenue nature.

However, in *CIT v Bharat Earth Movers Ltd* [(1985) 155 ITR 321 (Karn)], the amount paid towards training of officers of another concern taken over by the assessee was held not allowable as the expenditure was incurred by another concern in earlier years."

Page 1326: section 37(1):

After serial No. (3), giving illustrative cases where the expenditure incurred was held to be of revenue nature, *add,—*

"(4) Expenditure incurred on the maintenance and preservation of ship, which was a capital asset [*Addl. CIT v Putco Pr. Ltd.*, (1983) 140 ITR 740 (Bom)]. Also see, *CIT v Putco Pr. Ltd.*, (1985) 44 CTR (Bom) 108.

(5) Expenditure incurred in order to protect or preserve trade or business, etc. [see, *Ghansham Singh v CIT*, (1983) 141 ITR 601 (Mad); *CIT v O. P. N. Arunachala Nadar*, (1983) 141 ITR 620 (Mad); *Bilasrai Juharmal v CIT*, (1983) 141 ITR 915 (Bom); *CIT v Investment Corporation of India Ltd.*, (1982) 137 ITR 307 (Bom); *Suneeta Laboratories Ltd. v CIT*, (1986) 162 ITR 883 (MP). Cf. *CST v Brihan Maharashtra Sugar Syndicate Ltd.*, (1987) 165 ITR 275 (Bom)].

(6) Payment made for protecting name of the firm [*CIT v Georgepolous*, (1984) 146 ITR 380 (Mad)].”.

Page 1327: section 37(1):

After line 2 from top, dealing with illustrative cases where the expenditure incurred was held to be of capital nature, *add*,—

“(2) Expenditure incurred to enforce rights to obtain title to a piece of land [*Rajasthan Construction Co. Pr. Ltd. v CIT*, (1984) 148 ITR 61 (Bom)].

(3) Expenditure incurred for completing title to certain shares [*Jaya Hind Industries Pr. Ltd. v CIT*, (1986) 161 ITR 842 (Bom)].

(4) Expenditure incurred for creating or curing or perfecting title to the share capital of the company in accordance with the requirements of the statute and not for the protection of the business of the assessee [*CIT v Commonwealth Trust Ltd.*, (1987) 167 ITR 365 (Ker)].”.

Page 1327: section 37(1):

On the subject “IV. *For maintenance of business reputation and goodwill*”, reference may also be made to *CIT v McLeod & Co. Ltd.*, (1987) 164 ITR 681 (Cal); *South Asia Industries (P.) Ltd. v CIT*, (1985) 155 ITR 392 (Del).

Page 1330: section 37(1):

After serial No. (8), *add*,—

“(9) manganese ore [*Aditya Minerals (Pr.) Ltd.*, (1987) 167 ITR 774 (AP), holding that consideration, etc., paid by the assessee for 15-year lease of land for the purpose of excavating manganese ore was of capital nature].

(10) slabs [*CIT v South India Mining & Slab Co.*, (1987) 32 Taxman 1 (AP), holding that yearly payment made for 5-year lease from Government for excavating the slabs was in the nature of capital].

(11) stone [*Motwani & Co. v CIT*, (1987) 33 Taxman 585 (Ori), holding that amount of instalment paid under a three-year lease whereunder right to win, raise and remove stones from quarries was of capital nature].”.

Page 1330: section 37(1):

After serial No. (4), *add*,—

“(5) earth [*Shanker Dass Sethi & Sons v CIT*, (1986) 157 ITR 770

(Del), holding that payment made for taking a lease of land for seven years for excavating earth upto a depth of six feet for manufacture of bricks was of revenue nature because no interest in land was acquired].”.

Pages 1332-1333: section 37(1):

On the subject “*Removal of overburden*”, reference may also be made to *CIT v Rajendra Trading Co. Pr. Ltd.*, (1984) 146 ITR 637 (Cal).

Page 1333: section 37(1):

Before the paragraph titled “*Exploration expenditure*”, add,—

“**Mining land restoration charges.**—In *CIT v New India Mining Corpn. (P.) Ltd* [(1987) 168 ITR 431 (Bom)], the assessee-lessee claimed deduction in respect of estimated liability for ‘mining land restoration charges’ in view of obligation under section 108(m) of the Transfer of Property Act, 1882. It was held that under that section 108(m), the obligation is to restore demised property in as good condition as it was when the lessee was put in possession, subject to the changes caused by reasonable wear and tear. In the context of a mining lease, the obligation under that section 108(m) is not apposite, coming under wear and tear. Therefore, there existed no liability on the assessee to restore the land. The claim was rejected.”.

Page 1336: section 37(1):

After the heading “**VI. Taxes payable**”, add,—

“**For and from assessment year 1984-85, section 43B(a) holds the field.**—Section 43B, operative for and from assessment year 1984-85, enacts specific overriding provisions for allowability of “any sum payable by the assessee by way of tax or duty under any law for the time being in force”.

The discussion at pages 1336 to 1343 under the heading “**VI. Taxes payable**” relates to the state of law operative upto assessment year 1983-84.”.

Pages 1336-1338: section 37(1):

On the subject of allowability of “*Sales tax liability*”, up to and including assessment year 1983-84, reference may also be made to—

- (1) *ITAT v B. Hill & Co. (P.) Ltd.*, (1983) 142 ITR 185 (All) [provision made for sales tax liability, held allowable].
- (2) *CIT v Kisandas Goverdhandas Dave & Co.*, (1983) 144 ITR 624 (Bom) [in case of an assessee following mercantile system of accounting, accrued sales tax liability, held allowable]. Also see, *Bhagwandas Jagdishprasad & Co. v CIT*, (1983) 144 ITR 845 (MP); *CIT v Suresh Kumar Naresh Kumar*, (1984) 147 ITR 572 (Punj); *N. K. Textile Mills v CIT*, (1985) 152 ITR 594 (Del); *CIT v Deora Pu Cabncon Mfg. Co. Pr. Ltd.*, (1985) 152 ITR 654 (MP); *CIT v Indian Textile Paper Tube Co. Ltd.*, (1985) 153 ITR 585 (Mad).

- (3) *CIT v Kashiram Agrawalla*, (1984) 147 ITR 797 (Pat) [sales tax liability held deductible in determining the net profit but not deductible in arriving at gross profit].
- (4) *Addl. CIT v Rattan Chand Kapoor*, (1984) 149 ITR 1 (Del) [in case of an assessee following hybrid system of accounting, the disputed sales tax liability was held allowable in the year in which the same was settled and a demand notice in respect thereof was issued].
- (5) *Emerald Paints & Colour Products Pr. Ltd. v CIT*, (1986) 159 ITR 105 (Cal) [the lessee-assessee was held entitled to deduction in respect of undischarged sales tax liability of the lessor].
- (6) *CIT v East India Corporation Ltd.*, (1986) 159 ITR 712 (Mad) [sales tax liability was held allowable in the year in which the order in that regard was passed by the assessing authority].
- (7) *CIT v S. S. Ratanchand Bholanath*, (1986) 160 ITR 500 (MP) [additional sales tax assessed was held deductible for the year in which the assessment was made].
- (8) *Gangoomal Contractors v CIT*, (1987) 165 ITR 447 (MP) [an unregistered dealer was held not entitled to deduction in respect of sales tax liability because limitation for initiation of proceedings had already expired].
- (9) *Kalinga Tubes Ltd. v CIT*, (1987) 63 CTR (Ori) 117 [additional demand as sustained by the second appellate authority was held deductible in the year in which the appellate order was passed as the liability accrued in that year].

Page 1339: section 37(1):

At the end of paragraph titled "*Purchase tax liability*", add,—

"In *CIT v Guranditta Mal Shanti Parkash Zira* [(1987) 164 ITR 774 (Punj)], purchase tax liability was held allowable even though disputed.

In *CIT v Marwell Sea Foods* [(1987) 166 ITR 624 (Ker)], purchase tax on goods purchased but not sold in the year was held deductible."

Pages 1339-1340: section 37(1):

On the subject of allowability of "*Excise duty*", reference may also be made to—

- (1) *CIT v J. K. Synthetics Ltd.*, (1983) 143 ITR 771 (All) [in case of an assessee following mercantile system of accounting, provision made for excise duty liability was held deductible even though disputed before the High Court].
- (2) *CIT v Ratlam Strawboard Pr. Ltd.*, (1985) 152 ITR 425 (MP) [additional excise duty was held deductible for the year in which the demand notice in respect thereof was received, even though disputed: *CIT v Tata Chemicals Ltd.*, (1986) 162 ITR 556 (Bom)].

Pages 1340-1341: section 37(1):

At the end of the paragraphs titled "*Circumstances and property tax*", *add,—*

Further cases, on the question of allowability or otherwise of circumstances and other taxes relating to property, are—

- (1) *CIT v Saraswati Industrial Syndicate Ltd.*, (1982) 136 ITR 366, 373 (Punj) [property tax on the land and building used for business purposes was held allowable].
- (2) *CIT v Gemini Pictures Circuit Pr. Ltd.*, (1984) 146 ITR 540 (Mad); *Shankar Theatres v CIT*, (1984) 146 ITR 547 (Bom) [the liability as to municipal tax on property accrues half-yearly or yearly as per the provisions of the relevant law—liability for earlier years held not deductible in a subsequent year].
- (3) *CIT v T. S. Srinivasa Iyer*, (1984) 146 ITR 526 (Mad); *CIT v Gemini Pictures Circuit Pr. Ltd.*, (1984) 146 ITR 540 (Mad) [levy of urban land tax held to be invalid by the High Court—subsequently, the Supreme Court held the levy to be valid—liability even for earlier years to such tax held to accrue on the passing of the Supreme Court judgment].
- (4) *Dollar Co. v CIT*, (1986) 161 ITR 455 (Mad) [betterment tax paid to Corporation under Town Planning Act held not of capital nature and, therefore, allowable as a deduction. *Contra* cases may be seen at serial No. (24) at page 1278 of Vol. 2].

Page 1341: section 37(1):

Lines 25-26 from top: The decision in *George Oommen v State of Kerala* [(1977) 110 ITR 546 (Ker)] has been followed in *Mrs. Grace George & M. K. Thomas v Addl. ITO* [(1982) 137 ITR 403 (Ker)].

Page 1341: section 37(1):

After the paragraphs titled "*Wealth-tax*", *add,—*

"Surtax.—Surtax payable under the Companies (Profits) Surtax Act, 1964, falls under the ban of section 40(a)(ii) and is not deductible as an admissible business expenditure [*Molins of India Ltd. v CIT*, (1983) 144 ITR 317 (Cal); *Birla Jute Mfg. Co. Ltd. v CIT*, (1986) 162 ITR 413 (Cal); *Indian Oxygen Ltd. v CIT*, (1987) 164 ITR 466 (Cal); *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 678 (Cal); *CIT v International Instruments Pr. Ltd.*, (1983) 144 ITR 936 (Karn); *Mysore Kirloskar Ltd. v CIT*, (1987) 166 ITR 836 (Karn); *A. V. Thomas & Co. Ltd. v CIT*, (1986) 159 ITR 431 (Ker—FB); *Sundaram Industries Ltd. v CIT: Industrial Chemicals v CIT*, (1986) 159 ITR 646 (Mad); *Vazir Sultan Tobacco Co. Ltd. v CIT*, (1987) 31 Taxman 209 (AP)].

Also see, *T. T. Pr. Ltd. v CIT: Amco Batteries Ltd. v CIT*, SLP (Civil) Nos. 2744-45 of 1984 and 2739 of 1984: (1984) 150 ITR (St.) 79 (SC).

Annual listing fee paid to a Stock Exchange.—Such fee has been held allowable in view of the Departmental circular F. No. 10/67/65-IT(A-I), dated 26th August, 1965, which has been reproduced at serial No. XIII at page 1427 of Vol. 2 [*Motor Industries Ltd. v CIT*, (1987) 163 ITR 659 (Karn)].

But in the context of Agricultural Income-tax Act, payment of stock exchange listing fee as also membership fee of the stock exchange have been held not allowable items of deduction [*Cochin Malabar Estates & Industries Ltd. v C Ag IT*, (1982) 135 ITR 536 (Ker); *Thirumbadi Rubber Co. Ltd. v C Ag IT*, (1982) 135 ITR 540 (Ker); *Sanghameshwar Coffee Estates Ltd. v State of Karnataka*, (1986) 160 ITR 203 (Karn)].

Motor vehicles tax.—In *CIT v Estate of Late S. Mehboob Khan* [(1985) 153 ITR 353 (Mad)], provision was made in the mercantile accounts towards motor vehicles tax liability for three years in the year in which the Validation Act was enacted. The entire provision was held allowable.

But, where the liability in respect of the motor vehicles tax had already accrued, in the hands of the assessee adopting mercantile system, in an earlier year, its payment in a subsequent year will not enable its allowability in that subsequent year [*CIT v St. George Motors*, (1986) 161 ITR 444 (Ker)].”.

Page 1342: section 37(1):

At the end of paragraph titled “*Business profits tax*”, add,—

“But so far as the computation of total income in India is concerned, section 10 of the Business Profits Tax Act, 1947 (21 of 1947), specifically provides that the amount of the business profits tax payable under that Act shall be allowed as a permissible deduction, subject however to the proviso to that section [see, *Molins of India Ltd. v CIT*, (1983) 144 ITR 317, 331 (Cal)].”.

Page 1342: section 37(1):

After the paragraph titled “*Excess profits tax*”, add,—

“But section 12 of the Excess Profits Tax Act, 1940 (15 of 1940), makes specific provision for allowance of the amount of excess profits tax payable under that Act in computing total income of the assessee for income-tax purposes [see, *Molins of India Ltd. v CIT*, (1983) 144 ITR 317, 331 (Cal)].”.

Page 1342: section 37(1):

On the subject of allowability of “*Fees paid to Registrar of Companies*”, reference may also be made to—

- (1) *Bombay Burmah Trading Corporation Ltd. v CIT*, (1984) 145 ITR 793 (Bom) [fees paid to Registrar of Companies for enhancement of capital were held not allowable as revenue expenditure. But fees paid to the Registrar of Companies in connection with

the issue of bonus shares were held allowable as being of a revenue nature].

- (2) *Groz-Beckert Saboo Ltd. v CIT*, (1986) 160 ITR 743 (Punj) [fees paid to the Registrar of Companies for increasing the share capital were held of capital nature and not allowable]. Also see, *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 678 (Cal).

Page 1343: section 37(1):

After line 9 from top, *add*,—

“In *Sanghameshwar Coffee Estate Ltd. v State of Karnataka* [(1986) 160 ITR 203 (Karn)], the profession tax was held deductible in the context of Agricultural Income-tax Act as the same was an obligation fastened on the assessee under a statute.”.

Pages 1344-1347: section 37(1):

On the subject “*Allowability of salary paid to employees*”, reference may also be made to—

- (1) *Cochin Malabar Estate & Industries Ltd. v C Ag IT*, (1982) 135 ITR 536 (Ker) [staff of a closed estate employed in another estate—salary, etc., paid by another estate held allowable].
- (2) *CIT v Govindram Bros. Pr. Ltd.*, (1983) 141 ITR 777 (Bom) [salary paid to an employee was held not deductible as there was no evidence that the employee had rendered any service]. Also see, *J. K. Agents Pr. Ltd. v CIT*, (1983) 142 ITR 126 (MP); *Punjab Produce & Trading Co. Ltd. v CIT*, (1986) 159 ITR 376 (Cal).
- (3) *CIT v Nadar Press Ltd.*, (1984) 147 ITR 39 (Mad) [amount paid to employees who were discharged on the last day of the year and were re-employed from the first day of the next year was held to be out of commercial expediency as the same was to secure better conditions of employment and an incentive to the workers to turn out better work—held allowable].
- (4) *Rambilas Chandram v CIT*, (1985) 156 ITR 344 (Raj) [salary paid for looking after the affairs of another firm with which the assessee-firm had no business connection was held not deductible].
- (5) *Suneeta Laboratories Ltd. v CIT*, (1986) 162 ITR 883 (MP) [salary paid for several years by bank to a godown-keeper and watchman employed by the bank for the protection and preservation of the goods pledged by the assessee with the bank and debited in assessee's account in a subsequent year—amount so debited was held allowable in one year].
- (6) *Sanghameshwar Coffee Estates Ltd. v State of Karnataka*, (1986) 160 ITR 203 (Karn) [salary paid to *poojari* of a temple, held not deductible].
- (7) *CIT v R. V. Briggs & Co. P. Ltd.*, (1985) 155 ITR 495 (Cal), [additional salary payable under a mutual settlement was held allowable in the year in which the settlement was arrived at].

Also see, *CIT v Kalekhan Mohd. Hanif*, SLP (Civil) No. 297 of 1982: (1984) 148 ITR (St.) 65 (SC).

Page 1351: section 37(1):

On the subject of allowability of "*Leave salary*", reference may also be made to—

- (1) *CIT v Bharat General & Textile Industries Ltd.*, (1986) 157 ITR 158 (Cal) [provision for payment of leave salary was, on facts, held to be a contingent liability and, therefore, not deductible].

Also see, *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 207 (Punj).

Pages 1351-1353: section 37(1):

On the subject of allowability of "*Pension to an employee*", reference may also be made to—

- (1) *ITAT v B. Hill & Co. Pr. Ltd.*, (1983) 142 ITR 185 (All) [pension paid to widows of ex-directors was held to be out of regard for their personal financial difficulties and not allowable].
- (2) *CIT v Associated Electrical Industries (India) P. Ltd.*, (1986) 157 ITR 72 (SC) [premium paid to effect a pension and life assurance plan for employees was held allowable in the year in which the plan was amended leaving no control with the assessee].
- (3) *CIT v Indian Mollases Co. Pr. Ltd.*, (1987) 166 ITR 740 (Cal) [amount transferred to a trust for providing pension to the employees and after their death to the widows of the employees was held allowable]. For and from assessment year 1980-81, the provisions of sections 40A(9), 40A(10) and 40A(11) are relevant on the point.
- (4) *CIT v Commonwealth Trust Ltd.*, (1987) 166 ITR 732 (Ker) [payment of pension to the managing director was held to be made on the ground of commercial expediency and, therefore, allowable as a deduction].

Also see, *T. Stanes & Co. Ltd. v CIT*, SLP (Civil) No. 8838-8842 of 1980: (1983) 142 ITR (St.) 3 (SC).

Page 1353: section 37(1):

At the end of paragraph titled "*Gratuity*", add,—

"It may be noted that the Payment of Gratuity Act, 1972, has subsequently been amended by the Payment of Gratuity (Amendment) Act, 1984 (25 of 1984) [AIR 1984 Acts 157], operative from 1st July, 1984; the Payment of Gratuity (Second Amendment) Act, 1984 (26 of 1984) [AIR 1984 Acts 159], operative from 18th May, 1984; and the Payment of Gratuity (Amendment) Act, 1987 (22 of 1987), which has received the assent of the President on 12th August, 1987, and will be operative from a date to be appointed by the Central Government in that behalf.

Pages 1353-1355: section 37(1):

On the subject of allowability of gratuity "*When actually paid*", reference may also be made to—

- (1) *CIT v W. T. Suren & Co. Ltd.*, (1982) 138 ITR 91 (Bom) [transfer of business—transferor paid to the transferee towards its gratuity liability to employees joining the transferee—assessee-transferor's claim was held not allowable].
- (2) *CIT v Seshasayee Bros. Pr. Ltd.*, (1982) 138 ITR 779 (Mad) [payment of gratuity to widow of a director who died while in service—held allowable].
- (3) *CIT v Nazeena Traders Pr. Ltd.*, (1987) 165 ITR 405 (Mad) [payment of retrenchment compensation, gratuity and notice pay to the employees of a closed business was held allowable from the income of the continued business because the two businesses were found to constitute a single business].

Pages 1355-1356: section 37(1):

On the subject of allowability of "*Provision for gratuity—law upto 1972-73 A. Y.*", reference may also be made to—

- (1) *L. H. Sugar Factories & Oil Mills Pr. Ltd. v CIT*, (1982) 137 ITR 277 (All) [gratuity liability on actuarial valuation, held deductible].
- (2) *CIT v Coimbatore Cotton Mills Ltd.*, (1983) 140 ITR 562 (Mad) [provision for gratuity made on actuarial valuation, held allowable].
- (3) *CIT v Indian Express (Madurai) Pr. Ltd.*, (1983) 140 ITR 705 (Mad) [claim for deduction in respect of provision for gratuity on valid grounds may be entertained by the Tribunal even as an additional ground].
- (4) *CIT v Mettur Spng. Mills*, (1983) 140 ITR 991 (Mad) [gratuity provision based on actuarial valuation, held allowable].
- (5) *CIT v Sitalakshmi Mills Ltd.*, (1983) 141 ITR 415 (Mad) [provision made for gratuity liability, held allowable].
- (6) *CIT v Hindustan Times Ltd.*, (1983) 144 ITR 670 (Del) [provision for gratuity on the basis of actuarial valuation, held deductible].
- (7) *V. D. Swami & Co. Pr. Ltd. v CIT*, (1984) 146 ITR 425 (Mad) [Tribunal was held justified in remitting the matter to the Income-tax Officer for considering as to whether the provision for gratuity was based on scientific basis]. Also see, *CIT v Madras Rubber Factory Ltd.*, (1984) 149 ITR 411 (Mad).
- (8) *Balanoor Tea & Rubber Co. Ltd. v State of Karnataka*, (1984) 148 ITR 736 (Karn) [provision for gratuity, held allowable].
- (9) *Ishwar Industries Ltd. v CIT*, (1984) 149 ITR 301 (Del) [provision for actuarially valued gratuity liability, held deductible even

though such valuation was made after the close of the accounting year].

- (10) *CIT v Travancore Timbers & Products*, (1984) 149 ITR 450 (Ker), special leave petition dismissed by the Supreme Court: (1986) 161 ITR (St.) 131 [statutory gratuity liability held deductible in a particular year only to the extent such liability pertained to that year].
- (11) *CIT v Shyam Nagar Tin Factory Pr. Ltd.*, (1984) 150 ITR 617 (Cal) [statutory gratuity liability held allowable even though no provision was made therefor]. Also see, *CIT v Woolcombers India Ltd.*, (1984) 41 CTR (Cal) 63; *CIT v Calcutta Electric Supply Corporation Ltd.*, (1987) 166 ITR 797 (Cal).
- (12) *CIT v Sarada Binding Works*, (1985) 152 ITR 520 (Mad) [incremental gratuity liability payable to the employees in respect of the business that was retained, was held to be an admissible deduction].
- (13) *CIT v Lucas TVS Ltd.*, (1985) 153 ITR 239 (Mad) [provision for gratuity liability on actuarial basis, held allowable]. Also see, *CIT v S. A. E. (I) Pr. Ltd.*, (1985) 153 ITR 269 (Mad); *CIT v Mittal Steel Re-rolling & Allied Industries Pr. Ltd.*, (1985) 155 ITR 1 (Ker); *CIT v Remington Rand India Ltd.*, (1986) 159 ITR 922 (Cal); *Kil Kotagiri Tea & Coffee Estates Co. Ltd. v C Ag IT*, (1986) 161 ITR 497 (Mad); *CIT v Canning Mitra Phoenix Pr. Ltd.*, (1986) 162 ITR 836 (SC); *CIT v Pearey Lal & Sons Pr. Ltd.*, (1986) 162 ITR 838 (SC); *CIT v Perfect Pottery Co. (M. B.) Ltd.*, (1987) 163 ITR 529 (MP); *CIT v South India Viscose Ltd.*, (1987) 163 ITR 674 (Mad); *CIT v Travancore Rayons Ltd.*, (1987) 164 ITR 134 (Ker); *CIT v John Fleming & Co. Ltd.*, SLP (Civil) No. 7562 of 1979: (1987) 164 ITR (St.) 151 (SC); *CIT v Victor Gasket Industries Ltd.*, SLP (Civil) No. 307 of 1979: (1987) 164 ITR (St.) 151 (SC); *CIT v Vijaya Productions Pr. Ltd.*, SLP (Civil) No. 9956 of 1981: (1984) 146 ITR (St.) 5; *CIT v Bajraj Textiles Mills Ltd.*, (1984) 39 CTR (Mad) 270; *CIT v Guest Keen Williams Ltd.*, (1987) 166 ITR 405 (Cal); *CIT v Steel Rolling Mills of Bengal Ltd.*, (1987) 65 CTR (Cal) 116; *CIT v Orient Paper Mills Ltd.*, (1987) 34 Taxman 249 (Cal).
- (14) *Co-operative Tea Society Ltd. v CIT*, (1985) 154 ITR 405 (Ker) [amount withheld by the vendee towards the vendor's statutory liability for gratuity held deductible in the hands of the vendor].
- (15) *CIT v McDowell & Co. Ltd.*, (1985) 156 ITR 162 (Mad) [claim for an *ad hoc* sum not based on any actuarial valuation, held not tenable].
- (16) *CIT v Khandelwal Bros. Pr. Ltd.*, (1986) 158 ITR 207 (Cal) [provision for gratuity made in an year prior to the statute creating the liability came into force—held not allowable].

- (17) *CIT v Andhra Prabha Pr. Ltd.*, (1986) 158 ITR 416 (SC), affirming *CIT v Andhra Prabha Pr. Ltd.*, (1980) 123 ITR 760 (Mad); *CIT v High Land Produce Co. Ltd.*, (1986) 158 ITR 419 (SC), affirming *CIT v High Land Produce Co. Ltd.*, (1976) 102 ITR 803 (Ker) [Tribunal was held justified for allowing deduction in respect of provision for gratuity subject to the verification that the amount was calculated on scientific basis].

Also see, *CIT v William Goodacre (India) Ltd.*, SLP (Civil) No. 7772 of 1980: (1983) 141 ITR (St.) 51 (SC).

Page 1357: section 37(1):

At the beginning of the page, add,—

“Position up to assessment year 1972-73 summarised.—As to the allowability of gratuity up to assessment year 1972-73, the position has thus been summarised by the Supreme Court in Shree Sajjan Mills Ltd. v CIT [(1985) 156 ITR 585, 599-600]:—

- (1) Payments of gratuity actually made to the employee on his retirement or termination of his services were expenditure incurred for the purpose of business in the year in which the payments were made and allowed under section 37 of the Act.
- (2) Provision made for payment of gratuity which would become due and payable in the previous year was allowed as an expenditure of the previous year on accrued basis when mercantile system was followed by the assessee.
- (3) Provision made by setting aside an advance sum every year to meet the contingent liability and gratuity as and when it accrued by way of provision for gratuity or by way of reserve or fund for gratuity was not allowed as an expenditure of the year in which such sum was set apart.
- (4) Contribution made to an approved gratuity fund in the previous year was allowed as deduction under section 36(1)(v).
- (5) Provision made in the profit and loss account for the estimated present value of the contingent liability properly ascertained and discounted on an accrued basis as falling on the assessee in the year of account could be deductible either under section 28 or section 37 of the Act.’”.

Pages 1359-1360: section 37(1):

On the subject of allowability of “Remuneration payable to a karta or a member for managing HUF business”, reference may also be made to—

- (1) *Gopi Nath Seth v CIT*, (1984) 146 ITR 586 (All) [salary paid to karta, principles about its allowability discussed].
- (2) *Bijoy Kumar Choudhury v CIT*, (1984) 148 ITR 146 (Ori) [salary paid to karta for looking after the affairs of a firm in which the HUF was a partner]. Also see, *P. Nirmal Rao v CIT*, (1985) Tax LR 1144 (Ori).

- (3) *S. P. Chandrakanth v CIT*, (1984) 148 ITR 714 (Karn) [remuneration paid to *karta* by the HUF for services rendered by *karta* in relation to affairs of certain firms wherein the HUF was partner].
- (4) *Sunderlal Nanalal v CIT*, (1985) 151 ITR 25 (Guj) [salary paid to one of the members of the family for looking after the interest of the family in a firm wherein the HUF was a partner, held deductible].
- (5) *Jainarayan Chhotelal v CIT*, (1985) 152 ITR 11 (MP) [salary paid to the *karta* for services rendered for family business, held deductible].
- (6) *CIT v Prakashchandra Agrawal*, (1985) 152 ITR 14 (MP) [remuneration paid by the HUF to the *karta* for looking after the interest of the HUF in two firms wherein the family was partner].

Page 1361: section 37(1):

After serial No. 7, dealing with illustrative cases on the allowability of remuneration, etc., *add*,—

“8. *Sagar Automotives Pr. Ltd. v CIT*, (1984) 148 ITR 492 (MP) [Remuneration paid to directors was held allowable even though there was no provision for such payment in the Articles of Association of the company. This was so because the Articles did not specifically exclude the application of item 65 of Table A in Schedule I to the Companies Act, 1956, which clearly provides for payment of remuneration to directors. Apart from that, the remuneration so paid was sanctioned by a resolution of the company]. Also see, *CIT v Sagar Automotives Pr. Ltd.*, (1987) Taxation 85(3)-310 (MP).

9. *Kalekhan Mohammed Hanif v CIT*, (1987) 153 ITR 769 (MP) [Provision for statutory liability to pay wages for sub-standard articles, held deductible].

10. *Bally Jute Co. Ltd. v CIT*, (1986) 158 ITR 736 (Cal) [Salary paid to the wife of the employee was held not deductible because there was no evidence of any service rendered].

11. *CIT v Alim Beg Salim Bhai*, (1987) 163 ITR 767 (MP) [Provision made for liability to pay wages under the statute was held deductible].

12. *Perfect Pottery Co. Ltd. v CIT*, (1987) 166 ITR 196 (MP) [Provision for overtime wages was held not deductible because of the finding that the workers' demand of overtime had not been proved].

13. *CIT v C. Tharian & Sons*, (1987) 166 ITR 607 (Ker) [Provision made to meet liability for payment of wages for leave period was held allowable as a deduction].”

Page 1367: section 37(1):

After line 3 from top, *add*,—

“Further illustrative cases on the allowability of commission.—In the

facts of the following cases, commission was held deductible in computing the business income:—

(1) *CIT v Desmet (India) Pr. Ltd.*, (1982) 138 ITR 382 (Bom) [commission paid by way of consideration for execution of unfinished contract].

(2) *CIT v Hewitt Robins (New York)*, (1983) 141 ITR 278 (Cal) [commission paid by a foreign company to an Indian company for rendering assistance in securing contracts].

(3) *Swastic Textile Co. Pr. Ltd. v CIT*, (1984) 150 ITR 155 (Guj) [commission paid for service, held deductible as there was no evidence to support the finding of the Tribunal that services were not rendered by the person concerned and, therefore, such a finding was perverse].

(4) *Mahalaxmi Sugar Mills Co. Ltd. v CIT*, (1986) 157 ITR 683 (Del) [commission paid to sole selling agent, held deductible]. Also see, *CIT v Mahalaxmi Sugar Mills Co. Ltd.*, (1987) 165 ITR 97 (Del).

(5) *CIT v Ishwar Prakash & Bros.*, (1986) 159 ITR 843 (Punj) [commission paid for procuring orders, held deductible].

(6) *CIT v Colgate Palmolive (India) Ltd.*, (1982) Taxation 66(3)-242 (Bom) [brokerage paid was held deductible]. Also see, *CIT v National Rayon Corporation*, (1984) 17 Taxman 352 (Bom).

Also see, *Ganga Sugar Corpn. Ltd. v CIT*, (1985) 22 Taxman 338 (Del); *Mather & Platt (India) Ltd. v CIT*, (1987) 32 Taxman 38 (Cal); *CIT v Orissa Cement Ltd.*, (1987) Tax LR 1192 (Ori).

In the facts of the following cases, commission paid was held not deductible in computing the business income:—

(1) *Goodlas Nerolac Paints Ltd. v CIT*, (1982) 137 ITR 58 (Bom) [secret commission, names of recipients not disclosed]. Also see, *CIT v G. D. Kapoor & Sons*, SLP (Civil) Nos. 3945-3947 of 1982: (1986) 161 ITR (St.) 66 (SC). But in the facts of *CIT v Hoechst Dyes & Chemicals Ltd.*, (1984) 17 Taxman 389 (Bom) and *CIT v Mills Stores Trading Co. India Pr. Ltd.*, (1984) 18 Taxman 85 (Bom), secret commission paid was held allowable. In *CIT v Gannon Dunkerley & Co. Ltd* [(1987) 167 ITR 637 (SC)], it has been held that a question of law about deductibility of secret commission arose from the order of the Tribunal.

(2) *Indian Press Exchanges Ltd. v CIT*, (1982) 138 ITR 594 (Cal) [commission paid for procuring business where it was found that the same was paid for extra-commercial consideration]. Also see, *Indian Manufacturers (Madras) P. Ltd. v CIT*, (1985) 155 ITR 774 (Mad).

(3) *Ramdas Ramlal v CIT*, (1983) 139 ITR 620 (MP) [commission paid to the son of a partner, there being no evidence of rendering any service]. Also see, *CIT v Ramdas Ramlal*, (1984) 149 ITR 256 (MP).

(4) *Ess Ess Kay Engineering Co. Pr. Ltd. v CIT*, (1985) 151 ITR 636 (Punj) [commission paid was held not deductible as there was no evidence to establish that any specific services were rendered by the person concerned]. Also see, *Ess Ess Kay Engineering Co. Pr. Ltd. v CIT*, SLP (Civil) No. 8066 of 1981: (1982) 137 ITR (St.) 13 (SC).

(5) *CIT v Chandravilas Hotel*, (1987) 164 ITR 102 (Guj) [commission alleged to have been paid for supplying coins in exchange of currency notes, held not allowable as the assessee failed to prove payment of commission to the particular person].

Also see, *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1983) 141 ITR 664 (All); *CIT v A. R. Chadha & Co. (India) Ltd.*, (1985) 46 CTR (Del) 1; *Ved Prakash M. Patel v CIT*, (1987) 65 CTR (MP) 21.

Page 1367: section 37(1):

On the subject of allowability of "Guarantee commission", reference may also be made to—

(1) *L. H. Sugar Factories & Oil Mills Pr. Ltd. v CIT*, (1982) 137 ITR 227 (All) [guarantee commission paid to the directors was held deductible]. Also see, *CIT v Associated Traders & Engg. Ltd.*, (1987) 63 CTR (Del) 325.

(2) *C. J. Patel & Co. v CIT*, (1986) 158 ITR 486 (Guj) [commission paid to a bank for furnishing bank guarantee, held allowable].

Also see, *CIT v Shadilal Sugar & General Mills Ltd.*, SLP (Civil) No. 7282 of 1979: (1982) 137 ITR (St.) 13 (SC); *CIT v Associated Traders & Engineering Pr. Ltd.*, SLP (Civil) No. 2537 of 1982: (1984) 149 ITR (St.) 90 (SC).

Page 1368: section 37(1):

On the subject of "Onus" in cases of allowability of commission, reference may also be made to *Goodlas Nerolac Paints Ltd. v CIT*, (1982) 137 ITR 58 (Bom); *CIT v Ramdas Ramlal*, (1984) 149 ITR 256 (MP); *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1983) 141 ITR 664 (All).

Pages 1373-1375: section 37(1):

On the subject of allowability of "Retrenchment compensation", reference may also be made to—

(1) *Pradeep Pictures v CIT*, (1983) 143 ITR 300 (MP) [retrenchment compensation paid to employees of a closed theatre was held deductible from the income of the continued theatre, because the two theatres constituted a single business]. Also see, *CIT v Nazeena Traders (P.) Ltd.*, (1987) 165 ITR 405 (Mad).

(2) *Binani Printers Pr. Ltd. v CIT*, (1983) 143 ITR 338 (Cal) [retrenchment compensation paid on closure of the printing business was held not deductible from the income of the publishing business]. Also see, *India Manufacturers (Madras) Pr. Ltd. v CIT*, (1985) 155 ITR 774 (Mad).

(3) *CIT v Ellora Silk Mills*, (1983) 144 ITR 68 (Punj) [provision made for retrenchment compensation was held not deductible because there arose no accrued liability in that regard].

- (4) *CIT v K. Ravindranathan Nair*, (1985) 152 ITR 138 (Ker) [retrenchment compensation paid in respect of transferred units was held not deductible from the income of the continued units].
- (5) *M. Seshadri Iyengar Sons v CIT*, (1985) 152 ITR 734 (Mad) [retrenchment compensation in respect of a closed business held not deductible].
- (6) *CIT v Assam Oil Co. Ltd.*, (1985) 154 ITR 647 (Cal) [retrenchment compensation paid to employees exercising option to resign under a voluntary scheme was held deductible as the same was in order to effect economy and rationalisation of its personnel].

Page 1377: section 37(1):

After serial No. (7), giving the illustrative cases on the allowability of the compensation to directors, *add*,—

“(8) Compensation paid to former directors who have already resigned voluntarily, held not allowable because the payment was neither in terms of a contract nor under compulsion of statute nor as an inducement to resign [*Travancore Tea Estates Co. Ltd. v CIT*, (1985) 154 ITR 745 (Ker)].”.

Page 1378: section 37(1):

After serial No. (8), giving other illustrative cases on allowability of compensation, *add*,—

“(9) Compensation paid on account of shortfall in packing of controlled cloth: *Held*, allowable [*CIT v Rajkumar Mills Ltd.*, (1982) 135 ITR 811 (MP)].

(10) Compensation paid in respect of non-payment of the balance of the purchase price of the cinema theatre acquired: *Held*, allowable [*CIT v B. L. Dhingra & Sons*, (1985) 153 ITR 167 (Del)].”.

Pages 1378-1379: section 37(1):

On the subject of allowability of “Damages”, reference may also be made to—

- (1) *New Central Jute Mills Ltd. v CIT*, (1982) 136 ITR 742 (Cal) [damages paid for failure to convey a capital asset—held not deductible].
- (2) *Addl. CIT v J. & S. P. Ltd.*, (1984) 149 ITR 581 (Del) [damages paid to financiers for termination of agreement, held deductible, being of revenue nature].
- (3) *CIT v Ratlam Strawboard P. Ltd.*, (1985) 152 ITR 425 (MP) [liability on account of damages for failure to supply agreed quantity within the stipulated time was held not deductible because the same did not accrue in the relevant accounting year].
- (4) *Sardar Prit Inder Singh v CIT*, (1986) 160 ITR 493 (Pat) [damages paid for delay in supplying goods and materials and/or for supplying materials of sub-standard quality were held deductible].

- (5) *CIT v Indian Copper Corporation Ltd.*, (1986) 161 ITR 327 (Pat) [amount of *mesne* profits and damages awarded under a compromise decree was held allowable as business expenditure].
- (6) *CIT v Sohanlal Kunwar & Sons*, (1987) 164 ITR 129 (Raj) [damages for breach of contract were held deductible as the same were paid in the interest of the business and for commercial exigency].

Page 1381: section 37(1):

At the end of the paragraphs titled "*Which expenses are deductible?*", add,—

"In *Addl. CIT v C. S. Thacker* [(1983) 142 ITR 438 (Pat)], the expenditure incurred on stamp paper and registration fees for execution of a mortgage deed for securing the unpaid consideration money of the property purchased was held allowable as a revenue expenditure in the facts of the case.

In *CIT v Oswal Spng. & Wvg. Mills Ltd* [(1986) 160 ITR 426 (Punj)], the registration expenses for obtaining a loan for setting up a factory were held allowable as business expenditure.

In *M. P. Financial Corpn. v CIT* [(1987) 165 ITR 765 (MP)], proportionate amount of the discount given on the issue of bonds was held deductible for the relevant accounting year."

Page 1382: section 37(1):

On the subject of allowability or otherwise of "*Expenditure incurred in relation to issue of shares*", reference may also be made to—

- (1) *J. K. Agents Pr. Ltd. v CIT*, (1983) 142 ITR 126 (MP) [brokerage paid by the assessee, managing agent, on sale of new shares of the managed company was held deductible on the ground of commercial expediency].
- (2) *Ahmedabad Mfg. & Calico Pr. Ltd. v CIT*, (1986) 162 ITR 800 (Guj) [expenditure incurred towards issue of bonus shares—held not deductible, being of capital nature].
- (3) *Richardson Hindustan Ltd. v CIT*, (1987) 63 CTR (Bom) 16 [expenditure incurred in raising fresh share capital—held not deductible].

Pages 1382-1383: section 37(1):

On the subject of allowability of "*Interest for delayed payments of statutory imposts*", reference may also be made to—

- (1) *Triveni Engg. Works Ltd. v CIT*, (1983) 144 ITR 732 (All—FB), approving *Kamlapat Motilal v CIT*, (1976) 104 ITR 783 (All) [and holding that *Saraya Sugar Mills Pr. Ltd. v CIT*, (1979) 116 ITR 387 (All—FB) did not lay down correct law] [interest payable on sugarcane purchase tax arrears—held deductible]. Also see, *Shadi Lal Sugar & General Mills Ltd. v CIT*, SLP (Civil) No. 6065 of 1980: (1983) 141 ITR (St.) 46 (SC);

- Ganga Sugar Corpn. Ltd. v CIT*, (1985) 22 Taxman 338 (Del); *CIT v Jaswant Sugar Mills Ltd.*, (1987) Taxation 85(3)-224 (All); *Triveni Engg. Works Ltd. v CIT*, (1987) 167 ITR 742 (All).
- (2) *Bharat Commerce Industries Ltd. v CIT*, (1985) 153 ITR 275 (Del), special leave petition granted by the Supreme Court: (1985) 156 ITR (St.) 161 (SC) [interest levied under section 139 and/or section 215, held not deductible].
 - (3) *CIT v S. Kumaraswamy Reddiar Sons*, (1985) 154 ITR 724 (Ker) [interest levied under section 220(2) in respect of income-tax arrears, held not deductible]. Also see, *CIT v International Instruments Pr. Ltd.*, (1983) 144 ITR 936 (Karn).
 - (4) *Rajasthan Central Stores Ltd. v CIT*, (1985) 156 ITR 90 (Raj); *G. G. Sanghi v CIT*, (1985) 156 ITR 95 (Raj); *CIT v Udaipur Distillery*, (1986) 160 ITR 444 (Raj); *CIT v Western Indian State Motors*, (1987) 163 ITR 194 (Raj); *Rajasthan Central Stores Pr. Ltd. v CIT*, (1984) Taxation 73(3)-291 (Raj); *CIT v Western Indian State Motors*, (1987) 167 ITR 395 (Raj) [interest on delayed payment of sales tax, held allowable].
 - (5) *Union Drug Co. Ltd. v CIT*, (1985) 156 ITR 197 (Cal) [interest payable under section 16 of the Bengal Public Demands Recovery Act, 1913, for failure to make contribution under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, held deductible].
 - (6) *Bhowra Kankanee Collieries Ltd. v CIT*, (1985) 156 ITR 201 (Cal) [interest paid for late payment of royalty to Government, held deductible]. Also see, *CIT v Nathmal Bhuwalka*, (1987) 164 ITR 747 (Cal).
 - (7) *Mahalaxmi Sugar Mills Co. Ltd. v CIT*, (1986) 157 ITR 683 (Del) [interest paid for late payment of purchase tax and that paid on arrears of cess, held deductible].
 - (8) *CIT v Syndicate Bank*, (1986) 159 ITR 464 (Karn) [amount of excess interest under section 214 paid back by the assessee to the department—held, on facts, deductible].
 - (9) *CIT v Visnagar Taluka Mazdoor Sahakari Mandali Ltd.*, (1987) 163 ITR 224 (Guj) [interest paid on provident fund amount, held deductible].
 - (10) *CIT v Chodavaram Co-operative Sugars Ltd.*, (1987) 163 ITR 420 (AP) [interest paid on arrears of purchase tax and that paid on borrowings for paying purchase tax, held deductible]. Also see, *CIT v Shri Sarvaraya Sugars Ltd.*, (1987) 163 ITR 429 (AP).
- Also see, *CIT v Bharat Mining Corpn. Ltd.*, (1986) 160 ITR 941 (Cal).

Page 1384: section 37(1):

After serial No. (7), giving illustrative cases where interest was held not allowable, add,—

“(8) Interest paid on bank overdraft attributable to income-tax payments, held not deductible [*Dey's Medical Stores Mfg. Pr. Ltd. v CIT*, (1986) 162 ITR 630 (Cal)].

(9) Interest on bank overdraft attributable to borrowings for investment in a new project which constituted a separate and distinct business, held not deductible [*Dey's Medical Stores Mfg. Pr. Ltd. v CIT*, (1986) 162 ITR 630 (Cal)].

Also see, *CIT v Sundaram Fasteners Ltd.*, (1984) 149 ITR 773 (Mad).”.

Page 1384: section 37(1):

After serial No. (5), giving illustrative cases where interest was held allowable, *add.*—

“(6) Interest on mortgage—held deductible—purpose of mortgage immaterial [*Ruby Rubber Works Ltd. v Ag. ITO*, (1983) 139 ITR 218 (Ker)].

(7) Suit between two groups for rendition of accounts and dissolution of the firm was compromised—one group taking over all the assets and liabilities of the erstwhile firm as a going concern and agreeing to pay outstanding dues of the other group with interest—interest so paid held deductible [*CIT v N. D. Radha Kishan & Co.*, (1983) 140 ITR 860 (Punj)].

(8) Interest paid to sugarcane society and interest payable on the cane commission, held deductible [*CIT v Amritsar Sugar Mills Co. Ltd.*, (1983) 142 ITR 32 (Punj)].

(9) Interest on amounts borrowed by a co-operative society from its member, held deductible [*CIT v Bazpur Co-operative Sugar Factory Ltd.*, SLP (Civil) No. 5112 of 1982: (1984) 149 ITR (St.) 130 (SC) (special leave granted)].

(10) Interest on compensation paid in instalments, held deductible [*CIT v Cheran Transport Corpn.*, (1986) 160 ITR 630 (Mad)].

(11) Interest held allowable to the extent it accrued during the relevant accounting year [*N. R. Uthandam Transports Pr. Ltd. v CIT*, (1983) 14 Taxman 460 (Mad)].

(12) *CIT v J. K. Synthetics Ltd.*, (1985) 48 CTR (All) 130 [interest on borrowings for setting up a new plant by an existing company, held deductible].

Also see, *CIT v R. Dalmia*, (1987) 163 ITR 519 (Del); *Satya Dulal Singha v CIT*, (1987) 165 ITR 135 (Cal); *CIT v Godavari Sugar Mills Ltd.*, SLP (Civil) No. 8488 of 1980: (1983) 142 ITR (St.) 2.”.

Page 1387: section 37(1):

After serial No. 9, dealing with illustrative cases where expenses incurred by a partner were held to be deductible from his share income, *add.*—

“10. Interest paid by a partner to the firm on his debit balance (in the capital account) attributable to the partner's share in the loss of the firm, held deductible [*CIT v Smt. Shanti Devi Jalan*, (1983) 139 ITR 152 (Cal)].

11. Interest paid by the partner on the unpaid purchase money of the cinema theatre taken on lease by the partners individually and such theatre

was used for firm's business was held deductible in computing the share income of the partner concerned [*Smt. Rahim Khatoon v CIT*, (1987) 167 ITR 697 (AP)].”.

Page 1389: section 37(1):

After serial No. (8), giving illustrative cases where the payment made for avoiding business competition was held allowable, *add*,—

“(9) Payment made towards restrictive covenant whereunder the erst-while partners were restrained from carrying on similar business for five years—held revenue expenditure and allowable [*CIT v G. D. Naidu*, (1987) 165 ITR 63 (Mad)].”.

Page 1390: section 37(1):

After serial No. (6), giving illustrative cases where the payment made for avoiding business competition was held not allowable, *add*,—

“(7) Expenditure incurred with the twin objective of avoiding competition and clearing the way for acquisition of a capital asset, a mining lease, was held to be of capital nature and therefore not allowable [*Gujarat Mineral Development Corpn. Ltd. v CIT*, (1983) 143 ITR 822 (Guj)].”.

Pages 1390-1393: section 37(1):

On the subject of allowability or otherwise of “*Contributions to a political party*”, reference may also be made to—

(1) *ITAT v B. Hill & Co. Pr. Ltd.*, (1983) 142 ITR 185 (All) [donations made to a political party in power in expectation of help from the Government for running the business were held not having been made in the character as a trader and therefore not allowable].

(2) *Delhi Cloth & General Mills Co. Ltd. v CIT*, (1985) 156 ITR 649 (Del) [donation to Indian National Congress was held not deductible as the assessee could not establish any link between the donation and its business]. Also see, *Delhi Cloth & General Mills Co. Ltd. v CIT*, (1986) 158 ITR 64 (Del); *Delhi Cloth & General Mills Co. Ltd. v Addl. CIT*, (1986) 160 ITR 857 (Del).

Page 1391: section 37(1):

In line 26 from top, after the words “enacted into an Act”, *add*,—“By the Companies (Amendment) Act, 1985 (35 of 1985) [AIR 1985 Acts 234=(1985) 58 Comp Cas (St.) 187], operative on and from 24th May, 1985, the existing section 293A of the Companies Act, 1956, which placed a blanket ban on political contributions by companies, has been substituted by a new section 293A. This new section, in its sub-section (1), continues the existing blanket ban against political contributions to be made by Government companies and companies which have been in existence for less than three financial years. However, the new section, in its sub-section (2), permits any other company to make political contributions not exceeding 5 per cent. of its average net profits determined in accordance with the pro-

visions of sections 349 and 350 of the Companies Act during the three immediately preceding financial years, if a resolution authorising such contributions is passed at a meeting of the Board of Directors. The new section, in its sub-section (4), imposes an obligation on every company to disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person. Under sub-section (5) of the new section 293A, if a company makes any political contribution in contravention of these provisions, the company has been made liable to fine which may extend to three times the amount so contributed. Further, every officer of the company in default has been made liable to imprisonment for a term which may extend to three years and also to fine."

Page 1395: section 37(1):

After serial No. (14), giving illustrative cases where the expenses incurred on repairs, etc., were held to be of revenue nature and allowable, add,—

"(15) Expenses incurred on repairs and alterations of the rented building to make it fit for use as bonded warehouse [*Rampur Distillery & Chemical Co. Ltd. v CIT*, (1983) 140 ITR 725 (All), overruled on another point in *Lohia Machines Ltd. v Union of India*, (1985) 152 ITR 308 (SC)].

(16) Expenditure incurred on construction of roofs with asbestos sheets after the roofs of wooden poles and tiles were burnt in fire [*ITAT v B. Hill & Co. Pr. Ltd.*, (1983) 142 ITR 185 (All)]. Also see, *CIT v Special Steel Ltd.*, SLP (Civil) No. 18 of 1981: (1983) 144 ITR (St.) 11 (SC).

(17) Expenditure incurred on additions and alterations to the leasehold premises [*Nila Products Ltd. v CIT*, (1984) 148 ITR 99 (Bom)].

(18) Expenditure incurred on repairs to the ceiling and repairs and polishing of the furniture, etc., of a leasehold cinema theatre [*CIT v Rex Talkies*, (1984) 148 ITR 560 (Karn)].

(19) Expenditure incurred on replacement of pipe-line, on water-proofing of staff quarters, etc. [*Permali Wallace Ltd. v CIT*, (1985) 151 ITR 43 (MP)].

(20) Amount spent on demolition of a leasehold building and construction of a new building—held to be loss incidental to the business [*CIT v Madras Auto Service Ltd.*, (1985) 156 ITR 740 (Mad)].

(21) Expenses incurred on repairs and renovations in order to remove defects pointed out by the district magistrate at the time of renewal of cinema licence [*Puran Chand Seth v CIT*, (1986) 157 ITR 231 (Del)].

(22) Expenditure incurred on replacements of urinals and latrines as per direction of the district magistrate [*Gurnarain Khanna & Sons v CIT*, (1986) 159 ITR 231 (Del)].

(23) Expenditure incurred on repairs and renovation of a furnace of a glass factory [*CIT v Seraihella Glass Works Pr. Ltd.*, (1986) 159 ITR 677 (Pat)].

(24) Expenditure incurred on replacing the tin shed of factory premises

which was blown off in a storm [*CIT v Shree Hari Industries*, (1986) 161 ITR 249 (Raj)].

(25) Expenditure incurred on repairing and reconditioning an existing room to accommodate IBM machines [*Ahmedabad Mfg. & Calico Pr. Ltd. v CIT*, (1986) 162 ITR 800 (Guj)].

(26) Expenditure incurred in replacing old electric wiring in a cinema house [*CIT v Eagle Theatres*, (1987) 165 ITR 93 (Del)].

(27) Expenditure incurred on repairs to business premises [*CIT v Bengal Jute Mills Co. Ltd.*, (1987) 165 ITR 631 (Cal)].”.

Page 1395: section 37(1):

After serial No. (3), giving illustrative cases where expenses incurred on repairs, renovation, etc., were held to be of capital nature and not allowable, *add*,—

“(4) Expenditure incurred on renovation of factory building [*Ratlam Bone Mills v CIT*, (1984) 147 ITR 148 (MP)].”.

Page 1395: section 37(1):

At the end of the paragraph titled “XVI. *Expenditure on opening new branches*”, *add*,—

“In *Narayandas Kishandutt v CIT* [(1984) 149 ITR 636 (MP)], expenditure incurred on the maintenance of some of the branches not functioning during the relevant year was held deductible in computing the business income of that year because the assessee was to be assessed as one unit in respect of its income from all the branches.”.

Pages 1395-1396: section 37(1):

On the subject of allowability or otherwise of “*Expenditure on shifting of business place*”, reference may also be made to—

- (1) *India Pistons Repco Ltd. v CIT*, (1983) 143 ITR 424 (Mad) [expenditure incurred in dismantling the factory and re-establishing it at a new place—held not deductible, being of capital nature]. Also see, *CIT v Godrej Soaps Pr. Ltd.*, SLP (Civil) No. 11172 of 1982: (1984) 150 ITR (St.) 81 (SC).
- (2) *CIT v Karanpura Development Co. Ltd.*, (1983) 144 ITR 538 (Cal) [expenditure incurred in shifting laboratory to a new premises—held allowable, being of revenue nature].
- (3) *CIT v Jamshedpur Engg. & Machine Mfg. Co. Ltd.*, (1986) 157 ITR 730 (Pat) [expenditure incurred in shifting head office from Jamshedpur to Calcutta—held not deductible, being of capital nature].

Page 1399: section 37(1):

After serial No. (6), giving illustrative cases on the allowability or otherwise of the foreign tour expenses, *add*,—

"(7) Expenses incurred on tour of the managing director to Japan undertaken with a view to enter into a collaboration agreement held deductible [*CIT v Saraswati Industrial Syndicate Ltd.*, (1982) 136 ITR 366 (Punj)].

(8) Expenditure incurred by the assessee-firm on the foreign tour of the wife of the senior partner—held not deductible [*CIT v T. S. Hajee Moosa & Co.*, (1985) 153 ITR 422 (Mad)].

(9) Expenditure incurred on foreign tour of the wife of a director—held not deductible [*Bombay Mineral Supply Co. Pr. Ltd. v CIT*, (1985) 153 ITR 437 (Guj)].

(10) Expenditure incurred on foreign tour of the managing director undertaken for discussing foreign exchange aspect with the foreign supplier of plant and machinery for a new project—held allowable as revenue expenditure [*CIT v National Rayon Corpn. Ltd.*, (1985) 155 ITR 413 (Bom)].

(11) Expenditure incurred on bringing back dead body of the chairman who died while on business tour—held allowable [*CIT v Karam Chand Thapar & Bros. Pr. Ltd.*, (1986) 157 ITR 212 (Cal)].

(12) Expenditure incurred on foreign tour of general manager undertaken for entering into a collaboration agreement—held allowable [*Addl. CIT v Buckau Wolf New India Engg. Works Ltd.*, (1986) 157 ITR 751 (Bom)].

(13) Expenditure incurred on foreign tour of a director undertaken to attend a conference with the purpose of advancing company's business—also for the purpose of obtaining training by employees—held deductible [*Delhi Cloth & General Mills Co. Ltd. v CIT*, (1986) 158 ITR 64 (Del)].

(14) Expenditure incurred in sending some of the employees to USA for practical training & experience in running the factory—held allowable [*Hindusthan Aluminium Corpn. Ltd. v CIT*, (1986) 159 ITR 673 (Cal)].

(15) Expenditure incurred on foreign tour of managing director undertaken for finding out the availability of a special type of goods—held deductible [*CIT v Rajasthan Machinery Mart Pr. Ltd.*, (1986) 160 ITR 952 (Raj)].

(16) Expenditure incurred on foreign tour undertaken in connection with the purchase of a capital asset—held includible in actual cost but not allowable as business expenditure [*CIT v Belapur Co. Ltd.*, (1986) 161 ITR 516 (Bom)]. Also see, *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 275 (Del); *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 280 (Del); *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 283 (Del).

(17) Expenses incurred on foreign tour of partners undertaken for creating conditions or circumstances to increase business—held allowable [*Addl. CIT v Southern Leather Industries*, (1987) 164 ITR 194 (Mad)].

(18) Expenditure incurred on foreign tour undertaken in connection with the setting up of a new project for manufacturing a new product—held of capital nature [*Indian Oxygen Ltd. v CIT*, (1987) 164 ITR 466 (Cal)].

(19) Expenditure incurred on tour undertaken for initiation of a new business and not for the expansion of the business carried on by the assessee

—held of capital nature and, therefore, not allowable [*CIT v Flour & Food Ltd.*, (1987) 34 Taxman 88 (MP)].”.

Page 1400: section 37(1):

At the end of the paragraph titled “*Hotel charges of proprietor or partners on business tours*”, add,—

“In the facts of *Pratap Cotton Trading Co. v CIT* [(1986) 159 ITR 926 (Raj)], hotel expenses were held not deductible as no details of the expenditure were given.”.

Page 1405: section 37(1):

After serial No. (31), giving illustrative cases where civil litigation expenses were held to be allowable, add,—

“(32) by assessee for retaining possession of the lands worked as salt pans [*CIT v O. P. N. Arunachala Nadar*, (1983) 141 ITR 620 (Mad)].

(33) on litigation for recovering the amount invested by the assessee [*Beni Prasad Sidh Gopal v CIT*, (1984) 148 ITR 760 (All)].

(34) by the successor-in-business in connection with a suit filed by the predecessor-in-business for recovery of an amount relating to a business transaction [*CIT v T. Veerabhadra Rao, K. Koteswara Rao & Co.*, (1985) 155 ITR 152 (SC)].”.

Page 1407: section 37(1):

After serial No. (20), giving the illustrative cases where the civil litigation expenses were held not to be allowable, add,—

“(21) on litigation for enforcing the right to obtain title to a land [*Rajasthan Construction Co. (P.) Ltd v CIT*, (1984) 148 ITR 61 (Bom)].

(22) in relation to dispute regarding compensation payable for acquisition of the assessee’s insurance business [*Life Insurance Corporation of India v CIT*, (1987) 167 ITR 740 (Bom)].”.

Page 1407: section 37(1):

On the subject of allowability of expenses in relation to “*Taxation matters*”, reference may also be made to—

(1) *Nilgiri Plantations Ltd. v State of Karnataka*, (1986) 160 ITR 200 (Karn); *Sanghameshwar Coffee Estates Ltd. v State of Karnataka*, (1986) 160 ITR 203 (Karn) [fee paid to auditors for tax matters and for getting accounts audited was held deductible in the context of the Agricultural Income-tax Act].

Pages 1407-1408: section 37(1):

At the end of the paragraphs titled “*Taxation matters*”, add,—

“The said section 80VV has been omitted by the Finance Act, 1985, with effect from 1st April, 1986. Thus, the said section 80VV was operative for assessment years 1976-77 to 1985-86. For and from assessment year 1986-87,

the provisions of section 40A(12) are relevant on the allowability or otherwise of the expenditure incurred by an assessee in relation to taxation matters. For fuller details, reference may be made to discussion under section 40A(12) *post*."

Page 1410: section 37(1):

After serial No. (14), giving illustrative cases where expenses in relation to "*Company matters*" were held allowable, *add*,—

"(15) in connection with winding-up proceedings [*CIT v Investment Corporation of India Ltd.*, (1982) 137 ITR 307 (Bom)].

(16) in printing additional articles of association and in connection with the alteration of the articles of the company [*CIT v Merck Sharp & Dohme of India Ltd.*, (1983) 140 ITR 332 (Bom)]

(17) for the purpose of getting the extension of the managing agency agreement [*Rampur Distillery & Chemical Co. Ltd. v CIT*, (1983) 140 ITR 725 (All)], **overruled on another point** in *Lohia Machines Ltd. v Union of India*, (1985) 152 ITR 308 (SC)].

(18) in defending the suits filed by the shareholders, etc., which were primarily concerning unwise investments and making commitments for the benefit of unsound concerns and the mismanagement of the funds of the assessee-company [*CIT v Indo-Burmah Petroleum Co. Ltd.*, (1983) 142 ITR 141 (Cal)].

(19) on drafting and printing of articles of association [*CIT v Wyman Gordon (India) Ltd.*, (1983) 144 ITR 911 (Bom)].

(20) in defending the validity of two resolutions and thus resisting an attack on company's structure and on the conduct of its business [*CIT v Muir Mills Co. Ltd.*, (1984) 148 ITR 418 (All)].

(21) by way of legal expenses in connection with the amalgamation of another club with the assessee-club [*Madras Race Club v CIT*, (1985) 151 ITR 675 (Mad)].

(22) in connection with the enquiry before the Commission of Inquiry [*South Asia Industries (P.) Ltd. v CIT*, (1985) 155 ITR 392 (Del)].

(23) by way of legal expenses in executing plan for getting financial assistance from the Government [*CIT v Macneill & Berry Ltd.*, (1986) 158 ITR 385 (Cal)].

(24) in connection with appointment of managing director and reconstruction of the board of directors [*CIT v Mcleod & Co. Ltd.*, (1987) 164 ITR 681 (Cal)]."

Page 1411: section 37(1):

After serial No. (15), giving the illustrative cases where the expenses in relation to "*Company matters*" were held not allowable, *add*,—

"(16) in legal proceedings in connection with a scheme of amalgamation which did not materialised [*Bengal & Assam Investors Ltd. v CIT*, (1983) 142 ITR 156 (Cal)].

(17) by the assessee, a major shareholder, in connection with application under section 186 of the Companies Act for calling meeting of its subsidiary company for removal of existing directors and appointment of new directors, etc. [*United Breweries Ltd. v CIT*, (1986) 162 ITR 527 (Karn)].

(18) by the assessee towards fees for conducting an appeal before the Company Law Board in connection with the refusal of registration of certain shares in a company [*Jaya Hind Industries (P.) Ltd. v CIT*, (1986) 25 Taxman 36 (Bom)].

(19) in connection with seeking legal advice in the matter of certain irregularities and fictitious transactions as revealed in the auditors' reports [*CIT v Mcleod & Co. Ltd.*, (1987) 164 ITR 681 (Cal)].”.

Page 1413: section 37(1):

After serial No. (5), giving the illustrative cases where the expenditure incurred in criminal litigation was held allowable, *add*,—

“(6) *CIT v National Rayon Corporation Ltd.*, (1985) 155 ITR 413 (Bom) [expenditure incurred in defending a senior employee of the assessee was held deductible].

(7) *CIT v Indian Copper Corporation Ltd.*, (1986) 162 ITR 905 (Pat) [in defending watchmen and other employees who guarded the premises of the company].

However, the amount spent in defending directors who were prosecuted under the Mines Act was held not deductible because there was no evidence to show that the amount was spent for preserving the reputation of the assessee [*CIT v Indian Copper Corporation Ltd.*, (1986) 162 ITR 905 (Pat)],”.

Page 1415: section 37(1):

After serial No. (16), giving the illustrative cases where the claim for deduction of the amount of penalty, etc., was held rightly rejected, *add*,—

“(17) *Flour & Food Ltd. v CIT*, (1983) 140 ITR 648 (MP) [amount of income-tax paid on behalf of the employee in respect whereof a guarantee was given by the employer-assessee].

(18) *CIT v Maddi Venkataratnam & Co. Pr. Ltd.*, (1983) 144 ITR 373 (AP) [amount repatriated to the foreign importer in contravention of the Foreign Exchange Regulation Act].

(19) *Garden Silk Wvg. Factory v CIT*, (1983) 144 ITR 613 (Guj) [penalty imposed for altering and forging the import licences and for improperly making import of goods].

(20) *Nawabganj Sugar Mills Co. Ltd. v CIT*, (1984) 149 ITR 151 (Del) [penalty imposed for default in paying sugarcane cess].

(21) *Satyanarayana Rice Mill v CIT*, (1985) 155 ITR 676 (AP) [price of the rice seized and confiscated for default in delivering the levy rice].

(22) *CIT v S. S. Ratanchand Bholanath*, (1986) 160 ITR 500 (MP) [penalty imposed for delay in filing sales tax return—held not deductible].

(23) *T. Khemchand Tejoomal v CIT*, (1986) 161 ITR 492 (Bom) [penalty for clearing imported goods which were confiscated by the custom authorities].

(24) *Suneeta Laboratories Ltd. v CIT*, (1986) 162 ITR 883 (MP) [penalties imposed on account of delay in payment of provident funds, delay in filing sales tax returns and delay in payment of excise duty].

Also see, *CIT v Nirmal Paper Mart*, (1987) 163 ITR 545 (MP); *Freewheels India Ltd. v CIT*, (1987) 167 ITR 877 (Del)."

Page 1416: section 37(1):

After serial No. (8), giving the illustrative cases where the claim for deduction in respect of the amount paid was held allowable, *add,—*

"(9) *CIT v Rajkumar Mills Ltd.*, (1982) 135 ITR 811 (MP) [amount paid for shortfall, in export performance, was held not penalty for infraction of any law].

(10) *CIT v R. D. Sharma & Co.*, (1982) 137 ITR 333 (Bom) [amount, described as a penalty, paid on account of delay in the performance of a contract was held on account of compensation and not in the nature of a penalty].

(11) *Simplex Structural Works v CIT*, (1983) 140 ITR 782 (MP) [amount, though termed as penalty, paid representing the difference between the sales tax payable at the full rate and that payable at the concessional rate, was held sales tax and, therefore, deductible]. Also see, *CIT v Purshottam Jorabhai & Co.*, (1986) 160 ITR 153 (MP).

(12) *CIT v Maneklal Harilal Spng. & Mfg. Co. Ltd.*, (1983) 141 ITR 129 (Guj) [amount paid for failure to import the entire quota allotted to the assessee was held not of the nature of penalty—also payment made to Textile Commissioner for non-fulfilment of certain obligations was held deductible].

(13) *CIT v Chemicals & Fibres of India Ltd.*, (1983) 142 ITR 413 (Bom) [amount forfeited, out of guaranteed amount, for breach of export obligation was held not a penalty for infraction of law].

(14) *CIT v Loke Nath & Co.*, (1984) 147 ITR 624 (Del) [assessee, carrying on business of constructing and selling flats, paid certain amount as compensation to the municipality for condoning deviations from the original plan sanctioned—held not in the nature of penalty].

(15) *CIT v Mandya National Paper Mills Ltd.*, (1984) 150 ITR 26 (Karn) [penalty for non-payment of sales tax has been held not a penalty in the real sense but only a compensation for delay in payment of the tax due].

(16) *CIT v Tarun Commercial Mills Ltd.*, (1985) 151 ITR 75 (Guj) [payment made by the assessee to the Textile Commissioner for making up the shortfall in producing or packing goods was held not akin to penalty].

(17) *Mahalaxmi Sugar Mills Co. Ltd. v CIT*, (1986) 157 ITR 685 (Del) [demurrage paid to Railways was held not in the nature of penalty]."

Page 1416: section 37(1):

On the subject "*Breach of contractual obligation is different from infraction of law*", reference may also be made to—

(1) *Sardar Prit Inder Singh v CIT*, (1986) 160 ITR 493 (Pat) [damages paid for delay in supply of certain articles and also for supplying articles of inferior quality—held deductible].

(2) *Mediwala & Co. v CIT*, (1986) 161 ITR 74 (MP) [amount recovered by the buyers from the assessee-seller for supplying defective goods—held allowable].

Pages 1416-1417: section 37(1):

On the subject of allowability or otherwise of the expenditure incurred on "*Construction, etc., of approach roads, etc., to the factory*", reference may also be made to—

(1) *Thirumbadi Rubber Co. Ltd. v CAGIT*, (1982) 135 ITR 540 (Ker) [contribution made by the assessee for the construction of a bridge on a public road outside the estate of the assessee, held not deductible].

(2) *CIT v Amritsar Sugar Mills Co. Ltd.*, (1983) 142 ITR 32 (Punj) [liability towards the cost of construction of a road was held accrued under an award].

(3) *Gujarat Mineral Development Corporation Ltd. v CIT*, (1983) 143 ITR 822 (Guj) [expenditure incurred on the construction of a small approach bridge over a river for facilitating the laying of waterpipe to the assessee's beneficiation plant—bridge washed away by flood—held to be of capital nature].

Page 1420: section 37(1):

After serial No. (41), giving illustrative cases where the amount involved was held to be a permissible deduction, *add*,—

"(42) *CIT v Merck Sharp & Dohme of India Ltd.*, (1983) 140 ITR 332 (Bom) [expenditure incurred in connection with the laying ceremony of the foundation stone].

(43) *CIT v Nav Bharat Nirman Pr. Ltd.*, (1983) 141 ITR 723 (Del) [assessee, a dealer in land, claimed estimated liability for evicting existing tenants which it had undertaken under a lease agreement].

(44) *Brijraman Das & Sons v CIT*, (1983) 142 ITR 509 (All) [expenditure incurred on *Ganesh Puja* on the opening of account books, held deductible relying on circular printed at serial No. I at page 1422 of Vol. 2].

(45) *CIT v Freyssinet Prestressed Concrete Co. Ltd.*, (1983) 143 ITR 197 (Bom) [additional payment due to devaluation of Indian rupee]. Also see, *CIT v E. W. Stevens Co. Ltd.*, (1986) 158 ITR 235 (Cal).

(46) *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 275 (Del) [expenditure incurred on organising annual sports tournaments]. Also see, *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*,

(1983) 144 ITR 280 (Del); *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 283 (Del); *Delhi Cloth & General Mills Co. Ltd. v CIT*, (1986) 158 ITR 64 (Del).

(47) *CIT v Bharat Electronics Ltd.*, SLP (Civil) No. 10768 of 1981: (1984) 146 ITR (St.) 7 (SC) [expenses incurred by the assessee under an agreement with the water supply authorities to have pipe line laid to its premises].

(48) *CIT v Kirloskar Oil Engines Ltd.*, (1986) 157 ITR 762 (Bom) [expenditure incurred for travel, boarding and lodging of the assessee's distributors attending the seminar arranged in connection with the assessee's business and also in giving presentation articles to the assessee's foreign distributors].

(49) *CIT v United India Fire & General Insurance Co. Ltd.*, (1986) 161 ITR 295 (Cal) [amount re-imbursed by the assessee-company to a foreign insurer under an agreement].

(50) *CIT v Indian Copper Corpn. Ltd.*, (1986) 161 ITR 327 (Pat) [internal development expenses which represented expenses in creating temporary tunnels for carrying ore to shafts]. Also see, *CIT v Indian Copper Corpn. Ltd.*, (1986) 162 ITR 905 (Pat).

(51) *Vellore Electric Supply Corpn. Ltd. v CIT*, SLP (Civil) No. 3958 of 1982: (1986) 161 ITR (St.) 65 (SC) [amount statutorily required to be credited to a reserve]. Also see, *Keshkal Co-operative Marketing Society Ltd. v CIT*, (1987) 165 ITR 437 (MP). But see, *CIT v Sijua (Jharriah) Electric Supply Co. Ltd.*, (1984) 145 ITR 740 (Cal).

(52) *CIT v Calcutta Electric Supply Corpn. Ltd.*, (1987) 166 ITR 797 (Cal) [extra amount paid for remittance of dividends due to fluctuation in rate of exchange].

(53) *Andhra Sugars Ltd. v CIT*, (1987) 34 Taxman 431 (AP) [expenditure incurred by the assessee-company for giving silver medals to the shareholders and silver wall plaques to the directors on the occasion of the silver jubilee celebrations of the assessee-company].

(54) *CIT v Vazir Sultan Tobacco Co. Ltd.*, (1987) Taxation 87(3)-85 (AP) [amount whereby a trust was created for providing financial assistance and affording higher education to the needy children of the employees of the assessee-company].

Also see, *CIT v Sandoz Ltd.*, SLP (Civil) No. 19 of 1981: (1983) 144 ITR (St.) 12 (SC); *CIT v Teksons Pr. Ltd.*, SLP (Civil) No. 146 of 1981: (1983) 143 ITR (St.) 59 (SC)."

Page 1421: section 37(1):

After serial No. (16), giving illustrative cases where the amount involved was held not to be a permissible deduction, *add,—*

"(17) *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1983) 141 ITR 664 (All) [amount representing the shortage in cane supplies paid to the contractors for loading and unloading operations of sugarcane].

(18) *CIT v Kodandarama & Co.*, (1983) 144 ITR 395 (AP) [contributions made at specified rate to the Andhra Pradesh Welfare Fund for obtaining permits for export of rice to other States—held not deductible, being expenditure opposed to public policy].

(19) *India Manufacturers (Madras) Pr. Ltd. v CIT*, (1985) 155 ITR 774 (Mad) [claim for deduction in respect of rebate and allowances of the service department was held not tenable because there was no evidence to indicate that the service charges were withheld by the customers].

(20) *CIT v Khodidas Motiram Panchal*, (1986) 161 ITR 99 (Guj) [insurance premia paid on policies taken out by the assessee-firm on the lives of partners].

(21) *CIT v Calcutta Electric Supply Corporation Ltd.*, (1987) 166 ITR 797 (Cal) [extra amount paid on account of devaluation in redeeming the debentures].

Cases decided under the Agricultural Income-tax Acts.—On the point of allowability or otherwise of expenditure in the context of the Agricultural Income-tax Acts, reference may be made to the following cases:—

(1) *Ummer Plantations v State of Karnataka*, (1984) 148 ITR 564 (Karn).

(2) *Nilgiri Plantations Ltd. v State of Karnataka*, (1986) 160 ITR 200 (Karn).

(3) *Sanghameshwar Coffee Estates Ltd. v State of Karnataka*, (1986) 160 ITR 203 (Karn).

(4) *CAGIT v Pullangode Rubber & Produce Co. Ltd.*, (1986) 160 ITR 337 (Ker).

(5) *Pullangode Rubber & Produce Co. Ltd. v CAGIT*, (1986) 160 ITR 339 (Ker).

(6) *Good Hope Agencies (P.) Ltd. v CAGIT*, (1986) 162 ITR 300 (Ker).

(7) *CST v Brihan Maharashtra Sugar Syndicate Ltd.*, (1987) 165 ITR 275 (Bom).

(8) *Brihan Maharashtra Sugar Syndicate Ltd. v Dy. CAGIT*, (1987) 165 ITR 279 (Bom)."

Page 1435: section 37(1):

After line 33 from top, *add*,—

"Recent departmental circulars about section 37(1).—The following circulars are also relevant to section 37(1):—

I. *Commission earned by Insurance agents of the Life Insurance Corporation—allowance of expenditure.*—'Attention is invited to Board Circular dated the 14th September, 1965, issued from F. No. 14/9/65-IT(AI)‡ on the subject. It has been mentioned in that instruction, *inter alia*, that where detailed accounts regarding expenses incurred by the insurance agents are not maintained, an *ad hoc* deduction for expenses at the rate of 40 per cent.

‡ See serial No. XXV at pages 1433-1434 of Vol. 2.

of the first year's commission should be allowed. A ceiling of Rs. 6,000 in respect of such expenditure where the gross insurance commission do not exceed Rs. 20,000 was laid down and the discretion to grant a larger allowance not exceeding Rs. 10,000 in special circumstances was explained in detail.

2. The Board has been receiving representations that the rate of deduction should be raised from 40 per cent. having regard to the increase in costs. The Board has considered these representations and has decided that expenditure may be allowed @ 50 per cent. of the year's commission where the gross commission is less than Rs. 60,000. The above instructions of 22-9-1965 are modified to this extent. It may be clarified that these instructions will also apply to commission earned by authorised agents on the deposits secured by them under the Public Provident Fund Scheme.

3. These instructions may be brought to the notice of all officers in your charge'. [Instruction No. 1546: F. No. 168/9/83-IT(AI), dated 1st January, 1984.]

II. *'Security Deposit for Telex connection—Business expenditure under the Income-tax Act, 1961—Reference from associations—Treatment regarding.*—It has been brought to the notice of the Board that, as per an amendment made in the Indian Telegraph Rules with effect from 26th February, 1983, a subscriber for a Telex connection (either for existing one or a new one) is required to pay Rs. 10,000 towards Security Deposit to cover a part of the cost of the Departmental equipment installed at the premises of the subscriber which will also protect the Postal Department against any unpaid dues by the subscriber. It has been urged that the said amount of Security Deposit may be allowed as a *bona fide* business expenditure for the year in which the said amount is paid on the same lines as the initial payment for a Telephone connection under the "Own your Telephone" scheme†.

2. The matter has been examined and the Board are of the opinion that since the said deposit of Rs. 10,000 for a Telex connection does not earn any interest when the Telex Machine is installed, at that stage, this amount may be treated as a revenue expenditure allowable as a deduction if the assessee makes such a claim. However, when the amount is returned by the Postal Authorities when the Telex connection is finally closed, the refund of Rs. 10,000 shall be treated as an income of the assessee of the year in which the amount is refunded.' [Circular No. 420, dated 4th June, 1985.]".

Page 1436: section 37(2A):

Lines 32-33 from top: The decision in *Patel Engineering Co. Ltd. v CIT* [(1982) 135 ITR 49 (Bom)] has been followed in *Patel Engineering Co. Ltd. v CIT* [(1984) Taxation 75(1)-18 (Bom)].

Page 1436: section 37(2):

After line 33 from top, *add,—*

"On the point of allowability of entertainment expenses, reference may

† See serial Nos. II and III at pages 1423-1424 of Vol. 2.

also be made to *CIT v Advance Insurance Co. Ltd.*, (1979) 119 ITR 660, 663-4 (Bom).".

Page 1438: section 37(2):

In line 6 from top, after "(1972) Tax LR 892 (Cal)", add,—"; *CIT v Allied Motors Pr. Ltd.*, (1982) 136 ITR 835 (Del)" [holding that upto 31-3-1968 the entertainment allowances paid to the employees did not form part of 'entertainment expenditure' as contemplated by section 37(2)].

In *CIT v Govindram Bros. Pr. Ltd* [(1983) 141 ITR 777 (Bom)] and *CIT v Govindram Bros. Pr. Ltd* [(1983) 141 ITR 626 (Bom)], the entertainment allowance paid to a director was held allowable under the provisions of the 1922 Act.

Page 1439: section 37(2A):

At the end of the page, add,—

"The maximum deductible amount computed as per the above limits worked out to Rs. 30,000. That ceiling was applicable for assessment years 1977-78 to 1983-84.

As a result of the amendment of section 37(2A) by the Finance Act, 1983, with effect from 1st April, 1984, the entertainment expenditure, even incurred in India, is eligible for deduction, for and from assessment year 1984-85, subject to the limits prescribed in the amended section 37(2A), which are as under:—

- | | |
|---|--|
| (i) on the first Rs. 10,00,000 of profits, etc. | @ $\frac{1}{2}\%$ or Rs. 5,000, whichever is higher; |
| (ii) on the next Rs. 40,00,000 of the profits, etc. | @ $\frac{1}{4}\%$ of such profits; |
| (iii) on the balance | @ $\frac{1}{8}\%$. |

It has, however, been provided that the maximum deduction shall in no case exceed Rs. 50,000."

Page 1440: section 37(2A):

At the beginning of the page, add,—

"Inclusive definition of 'entertainment expenditure' coined with retrospective effect from 1-4-1976.—Prior to the insertion of an inclusive definition of the expression 'entertainment expenditure' in the newly inserted *Explanation 2* to section 37(2A) by the Finance Act, 1983, with retrospective effect from 1st April, 1976, there was a cleavage of judicial opinion as to the implication of the expression 'entertainment expenditure' as is evidenced from the discussion under the paragraphs titled '*Entertainment expenditure—what it means and includes?*' at pages 1440-1442 of Vol. 2 and the later cases now added thereto.

For the import of this new definition of the expression 'entertainment expenditure', reference may be made to paragraphs 31.1 and 31.2 of the

departmental circular No. 372, dated 8th December, 1983, which have been reproduced at page lxix of Vol. 4.

In *CIT v Green Roadways* [(1985) 154 ITR 639 (Raj)], expenditure incurred in providing tea, coffee, soft drinks, etc., to customers has been held to be 'entertainment expenditure' within the meaning of *Explanation 2* to section 37(2A). Also see, *CIT v Yadav Transport Service*, (1987) 167 ITR 474 (Raj).

But, under that *Explanation 2*, messing expenses incurred for employees are not 'entertainment expenditure' [*CIT v Central India Builders*, (1985) 156 ITR 453 (Guj)]. Shareholders of a company cannot be treated as 'employees' within the meaning of that *Explanation 2* [see, *CIT v Mysore Minerals Ltd.*, (1986) 162 ITR 562 (Karn)].

Entertainment expenditure covered by section 37(2A) is allowable subject to the ceiling limits prescribed by that section [see, *Amritsar Transport Co. Pr. Ltd. v CIT*, (1986) 161 ITR 18 (Punj)].”.

Page 1440: section 37(2A):

After serial No. 7, giving illustrative cases where the expenditure incurred was held to be 'entertainment expenditure', add,—

“8. *Brijraman Das & Sons v CIT*, (1983) 142 ITR 509 (All) [amount spent in providing refreshments to constituents and in purchasing articles for serving refreshments]. Also see, *Laxmi Narain Chunni Lal v CIT*, (1983) 140 ITR 837 (All); *CIT v U. P. Hotels*, (1987) 163 ITR 805 (All).

9. *Chandmull Rajgarhia v CIT*, (1987) 167 ITR 433 (Pat) [expenditure incurred by the assessee in entertaining foreign guests and visitors].”.

Page 1442: section 37(2A):

After line 7 from top, add,—

“Since assessment year 1976-77 the statutory definition of the expression 'entertainment expenditure' holds the field on the above controversy.

Onus for invoking section 37(2A).—Where the allowability of a particular expenditure under section 37(1) is not disputed, it is for the department to prove its nature to be that of entertainment expenditure if the limit laid down in that section is intended to be applied [*Saraswati Industrial Syndicate Ltd. v CIT*, (1982) 136 ITR 361, 365 (Punj)].”.

Page 1442: section 37(2A):

After serial No. 7, giving illustrative cases where the expenditure was held not to be entertainment expenditure, add,—

“8. *CIT v Navalmal Punamchand*, (1982) 135 ITR 801 (MP) [messing expenses to provide meals to up-country customers].

9. *CIT v Rajkumar Mills Ltd.*, (1982) 135 ITR 811 (MP) [amount spent in providing tea, etc., to customers visiting the mills of the assessee].

10. *CIT v Mathuralal Kapoorchand & Co.*, (1983) 141 ITR 297 (MP) [expenditure incurred on providing messing facilities to trade clients]. Also see, *CIT v Shyam Lal Ramcharan*, (1984) 147 ITR 52 (MP); *CIT v*

Shree Synthetics Ltd., (1986) 162 ITR 819 (MP); *CIT v Ashish Coal Coke Traders*, (1987) 163 ITR 174 (MP); *CIT v Jadhavji Kanji & Co.*, (1983) 35 CTR (MP) 320.

But, expenditure incurred on entertaining customers and business constituents to lunches and dinners at posh hotels has been held to constitute entertainment expenditure [*Central Paints Ltd. v CIT*, (1984) 146 ITR 212 (MP)]. Also see, *Mysodet Pr. Ltd. v CIT*, (1987) 163 ITR 848 (Karn)].

11. *CIT v Orient Prospecting Co.*, (1983) 141 ITR 301 (Guj) [expenses incurred on messing and tea]. Also see, *CIT v Mehta Transport Company*, (1986) 160 ITR 35 (Guj); *CIT v Jyoti Ltd.*, (1987) 163 ITR 274 (Guj).

12. *Brijraman Das & Sons v CIT*, (1983) 142 ITR 509 (All) [expenses incurred on transportation of customers and festival allowance paid to staff].

13. *CIT v Maddi Venkataratnam & Co. Pr. Ltd* [(1983) 144 ITR 373 (AP)], provision of coffee, tea and food, etc., to customers]. Also see, *CIT v Sirpur Paper Mills*, (1983) 144 ITR 393 (AP); *CIT v Warner Hindustan Ltd.*, (1984) 145 ITR 24 (AP).

14. *CIT v Supreme Motors Pr. Ltd.*, (1984) 147 ITR 48 (Del) [provision of tea and cold drinks to customers, etc.]. Also see, *Santlal Kashmirilal v CIT*; (1986) 157 ITR 422 (Del).

15. *CIT v O. M. S. S. Sankaralinga Nadar & Co.*, (1984) 147 ITR 332 (Mad) [expenditure on provision of coffee, tea and other refreshments supplied to customers]. Also see, *CIT v Express Newspapers Ltd.*, SLP (Civil) Nos. 5850-5851 of 1980 and 5100-5101 of 1981: (1985) 155 ITR (St.) 5 (SC); *CIT v Carborandum Universal Ltd.*, (1985) 156 ITR 1 (Mad); *CIT v L. G. Balakrishna & Bros. Ltd.*, (1984) 38 CTR (Mad) 59; *CIT v Sundaram Industries Ltd.*, (1987) 166 ITR 35 (Mad).

16. *Devichand Bastimal: Bhanwarlal Manakchand v CIT*, (1985) 156 ITR 166 (Raj) [provision of food and soft drinks to customers and constituents]. Also see, *CIT v Mewar Sugar Mills Ltd.*, (1986) 157 ITR 444 (Raj); *CIT v Seth Abdulla Yusuf*, (1986) 159 ITR 810 (Raj); *Pratap Cotton Trading Co. v CIT*, (1986) 159 ITR 926 (Raj); *Shree Sadul Textiles Ltd. v CIT*, (1987) 165 ITR 154 (Raj); *CIT v Meg Raj Sohan Lal*, (1987) 165 ITR 411 (Raj); *Metharam Lekhumal v CIT*, (1987) 165 ITR 568 (Raj); *Pratap Trading Co. v CIT*, (1987) 167 ITR 36 (Raj); *Green Roadways v CIT*, (1985) 23 Taxman 16 (Raj); *Rajasthan Cotton Mills v CIT*, (1985) 49 CTR (Raj) 49; *CIT v Aditya Mills*, (1987) 31 Taxman 273 (Raj); *CIT v Bhonrilal Jain*, (1987) 167 ITR 400 (Raj); *CIT v Aditya Mills*, (1987) 168 ITR 43 (Raj); *Mangilal Vijay Kota v CIT*, (1987) 167 ITR 37 (Raj).

17. *CIT v Agarpara Co. Ltd.*, (1987) 167 ITR 866 (Cal) [expenditure incurred on supply of ordinary items of refreshments and other items like cigarettes, etc.]. Also see, *CIT v KMW Johnson Ltd.*, (1987) 59 CTR (Cal) 160; *CIT v Orient Paper Mills Ltd.*, (1987) 34 Taxman 249 (Cal).

Also see, *CIT v Salam Hanif Taj Fruit*, SLP (Civil) No. 6199 of 1981:

(1984) 147 ITR (St.) 4 (SC); *Travancore Electro-Chemical Industries Ltd. v CIT*, SLP (Civil) No. 15449 of 1985: (1986) 159 ITR (St.) 107.

In *CIT v Prasad Process (Pr.) Ltd* [(1983) 141 ITR 9 (Mad)], the distinction between entertainment and hospitality has been pointed out.

In *Nava Bharat Enterprises Pr. Ltd. v CIT* [(1983) 143 ITR 804 (AP)], the general principles about allowability or otherwise of entertainment expenditure were discussed. Also see, *CIT v K. P. V. Shaik Mohamed Rowther & Co.*, (1983) 14 Taxman 440 (Mad); *CIT v Navabharat Enterprises*, (1987) 31 Taxman 173 (AP).

The expression "entertainment" as used in section 2(3) of the Uttar Pradesh Entertainment and Betting Tax Act, 1937, has been interpreted by the Supreme Court in *Geeta Enterprises v State of U.P.* [(1983) 15 Taxman 14 (SC)].

Page 1443: section 37(3):

At the end of the paragraphs titled "*Expenditure on advertisement in souvenirs*", add,—

"In the facts of *CIT v Sundaram Finance Pr. Ltd* [(1985) 154 ITR 564 (Mad)], it was held that circular No. 200, dated 28th June, 1976 [printed at serial No. VIII at pages 1425-26 of Vol. 2] had application. Merely because the advertisement given by the assessee were published in the souvenirs released by a political party on the eve of election, they did not cease to be advertisements and the expenses incurred therefor could not be labelled as donations to a political party. Expenditure on such advertisements was held allowable for the assessment year 1973-74 as the conditions of rule 6B were also satisfied.

In *CIT v Saurashtra Cement & Chemicals Industries Ltd* [(1987) 163 ITR 258 (Guj)], the assessee incurred expenditure on advertisements in souvenirs issued by charitable institution. The Tribunal did not give any finding whether the expenditure was on advertisements eligible for deduction under section 37(1) or the same was to be treated as a donation eligible for straight deduction under section 80G. In the absence of such a finding, the matter was remanded to the Tribunal."

Page 1444: section 37(3):

After line 6 from top, add,—

"In *CIT v Ratan Chand Samir Mal* [(1985) 154 ITR 399 (Raj)], the assessee distributed certain silver glasses amongst its customers. The cost of each glass did not exceed Rs. 50. It was held that the cost of such glasses was eligible for deduction as there was no breach of rule 6B making prescriptions about expenditure on advertisements.

In *CIT v Autofin Ltd* [(1985) 151 ITR 741 (AP)], it has been held that the ceiling prescribed by rule 6D(2) applies to travelling expenses incurred by an 'employee' or 'any other person'. Therefore, the travelling expenses incurred by a director or managing director in excess of the ceiling prescribed in rule 6D(2) are not eligible for deduction under section 37(3)."

Pages 1448-1449: section 37(3):

At the end of the paragraph titled "*Guest-house—What it is?*", add,—
"Section 37(5), inserted by the Finance Act, 1983, with retrospective effect from 1st April, 1979, defines what a guest-house is. For the scope and effect of the new section 37(5), reference may be made to paragraphs 34.1 and 34.2 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages lxx-lxxi of Vol. 4."

Page 1449: section 37(3):

At the end of the paragraph titled "*The then rule 6C made prescriptions for guest house only*", add,—

"In the facts of *Nava Bharat Enterprises Pr. Ltd. v CIT* [(1983) 143 ITR 804, 807 (AP)], the assessee was held not entitled to deduction in respect of expenditure on account of maintenance of guest house because it had not maintained the register as required by the then rule 6C(3). Also see, *Golcha Properties v CIT*, (1987) 33 Taxman 20 (Raj)."

Pages 1449-1450: section 37(4):

At the end of the paragraphs titled "*Guest-house maintenance—disallowance of expenditure on—section 37(4)*", add,—

"In *N. G. E. F. Ltd. v CIT* [(1985) 153 ITR 197 (Karn)], the expenditure incurred on the maintenance of guest-houses at Delhi and Bombay was held not allowable because there was no evidence to show that the guest-houses were meant exclusively for the use of the employees while on leave as holiday homes. Also see, *CIT v Syndicate Bank*, (1986) 159 ITR 464 (Karn).

In *CIT v Parshva Properties Ltd* [(1987) 164 ITR 673 (Cal)], the assessee had a bungalow situated in a remote corner of a district in Bihar. Employees, etc., went there on duty and stayed there temporarily for doing their work. Expenses were incurred on the stay of such persons at the bungalow. The Tribunal allowed such expenses on the ground that the maintenance of the bungalow could not be held to be maintenance of a guest-house within the meaning of section 37(4). The Tribunal's view was upheld by the High Court.

In *CIT v Orient Paper Mills Ltd* [(1987) 34 Taxman 249 (Cal)], the assessee provided accommodation at places where no accommodation of any kind was available. The same was not meant for entertainment or relaxation. Further, the persons availing the accommodation had been paying charges covering almost the entire expenditure. It was held that such accommodation facilities could not be treated as a guest house so as to attract the provisions of section 37(4).

Also see, *CIT v Modi Pan Ltd.*, (1987) 163 ITR 714 (All)."

Page 1453: section 37:

Before the text of section 38, add,—

"The said sub-sections (3A), (3B), (3C) and (3D) as so amended:

were omitted by the Finance (No. 2) Act, 1980 (44 of 1980), with effect from 1st April, 1981. Thus, the 1978-inserted sub-sections remained operative for assessment years 1979-80 and 1980-81.

Thereafter, new sub-sections (3A), (3B), (3C) and (3D) were inserted in section 37 by the Finance Act, 1983, with effect from 1st April, 1984, making provisions for partial disallowance of certain expenses on account of advertisement, publicity and sales promotion, etc. The scope and effect of the 1983-inserted sub-sections have been elaborated in paragraphs 33.1 to 33.5 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages lxix-lxx of Vol. 4. Section 37(3A) has been held not violative of Article 14 of the Constitution [*Mysore Kirloskar Ltd. v Union of India*, (1986) 160 ITR 50 (Karn)]. These sub-sections have, however, been omitted by the Finance Act, 1985, with effect from 1st April, 1986. Thus, these sub-sections remained operative for assessment years 1984-85 and 1985-86.”

Page 1454: section 38:

At the end of paragraph titled “*Legislative amendments*”, add,—

“Section 38(2) has also been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1988. The amendment is consequential to the change in the law about allowance of depreciation.”

Page 1456: section 38:

At the end of paragraph titled “*Part disallowance*”, add,—

“In *Punjab National Bank Ltd. v CIT* [(1983) 141 ITR 886 (Del)], the assessee-bank owned a six-floor building, of which five floors were used for business purposes and the sixth floor was let out. It was held that depreciation was allowable only on 5/6ths of the building and not the entire building.

In *CIT v K. L. Bhasin & Co* [(1986) 158 ITR 623 (Pat)], motor cars belonging to the assessee-firm were used by its partners for personal purposes. One-fourth depreciation was, on that account, held not allowable. Also see, *Bhilai Motors v CIT*, (1987) 167 ITR 147 (MP).”

Page 1463: section 40(a)(i):

After line 4 from top, add,—

“The word ‘paid’ in section 40(a)(i) covers not only voluntary payments but also payments made otherwise, i.e., the amount recovered from the assessee under the provisions of the Act [*Addl. CIT v Farasol Ltd.*, (1987) 163 ITR 364, 372 (Raj)].”

Page 1464: section 40(a)(ii):

After the paragraph titled “*Income-tax*”, add,—

“*Surtax*.—For discussion, see, page 6155, *ante*.”

Page 1464: section 40(a)(ii):

At the end of footnote marked†, *add*,—"That section 80V was operative upto assessment year 1985-86."

Page 1465: section 40(a)(ii):

At the end of the paragraph titled "*Deduction of cess paid*", *add*,—

"In *Ugar Sugar Works Ltd. v State of Karnataka* [(1985) 155 ITR 39 (Karn)], the cess paid on sugarcane used by the assessee has been held allowable deduction in the context of the Agricultural Income-tax Act."

Page 1473: section 40(b):

After the paragraph titled "*1922 Act*", *add*,—

"Legislative amendment.—By the Taxation Laws (Amendment) Act, 1984 (67 of 1984), after clause (b) of section 40, three *Explanations* have been inserted with effect from 1-4-1985, i.e., for and from assessment year 1985-86. The scope and effect of these *Explanations* have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

'Amounts not deductible in the computation of income from business or profession—section 40.—7.1 Section 40(b) of the Act provides that in the case of a firm, any payment of interest, salary, bonus, commission, or remuneration made by the firm, to any partner of the firm shall not be allowed as deduction in computing the income of the firm chargeable under the head "Profits and gains of business or profession".

7.2 The Amending Act has inserted three new *Explanations* to section 40(b) of the Act. *Explanation 1* provides that where interest is paid by firm to a partner who has also paid interest to the firm, the amount of interest to be disallowed under section 40(b) of the Act shall be limited to the net amount of interest paid by the firm to the partner. To illustrate: (i) If a firm paid interest of Rs. 7,000 to a partner and that partner paid interest of Rs. 2,000 to the firm in the same accounting year, the disallowance to be made under section 40(b) of the Act in the case of the firm will be restricted to Rs. 5,000 only.

(ii) If a firm paid interest of Rs. 5,000 to a partner and that partner paid interest of Rs. 8,000 to the firm in the same accounting year, no disallowance of interest will be required to be made under section 40(b) of the Act in the computation of the income of the firm.

7.3 *Explanation 2* provides that where an individual is a partner in a firm on behalf, or for the benefit, of any other person, interest paid by the firm to such individual or by such individual to the firm, otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of section 40(b) of the Act. Thus, if an individual is a partner in a firm on behalf of a Hindu undivided family, interest paid by the firm to such individual otherwise than in his capacity as representative of the HUF will not be taken into account for the purposes of section 40(b) of the Act. It has also been provided that, in such cases, interest

paid by the firm to such individual or by such individual to the firm as partner in a representative capacity and interest paid by the firm to the person so represented or by such person to the firm shall be taken into account for the purposes of section 40(b) of the Act.

7.4 Explanation 3 provides that where an individual is a partner in a firm otherwise than in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of section 40(b) of the Act, if such interest is received by him, on behalf, or for the benefit of any other person. In other words, if an individual is a partner in a firm in his personal capacity, interest paid by the firm to such individual, not in his personal capacity, but, say, as representing an HUF of which he is the *karta*, shall not be taken into account for the purposes of section 40(b) of the Act.

7.5 These amendments will take effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'''

Page 1473: section 40(b):

In lines 3 and 4 of the paragraph titled "*Salary to partner*", after "33 ITR 538 (Bom)", add,—"; *Regional Director, E. S. I. C. v Ramanuja Match Industries*, AIR 1985 SC 278" [holding that a partner of a firm is not an employee of the firm].

Page 1474: section 40(b):

At the end of line 23 from top, after "135 ITR 359 (Del).", add,—"*In Ratlam Bone Mills v CIT* [(1984) 147 ITR 148 (MP)], the salary paid to one of the partners in his individual capacity, although he was a partner representing his HUF, was held hit by section 40(b) and was therefore disallowed. Also see, *Chandmul Rajgarhia v CIT*, (1987) 164 ITR 486 (Pat); *Chandmull Rajgarhia v CIT*, (1987) 167 ITR 433 (Pat). *Contra: N. T. R. Estate v CIT*, (1986) 157 ITR 285 (AP)."

Page 1475: section 40(b):

In line 18 from bottom, after "16 ITR 367 (Mad)", add,—"; *Mysore Bangle Works v CIT*, (1986) 157 ITR 411 (Karn)" [holding that commission paid by the firm to a partner in his capacity of a sole proprietor of another concern was hit by section 40(b)].

Page 1476: section 40(b):

At the end of the paragraphs titled "*Interest*", add,—

"The language of section 40(b) is clear and enacts an absolute prohibition. The test to be applied is whether the interest was paid to the partner. In making the assessment of a firm, the Income-tax Officer cannot ignore the provisions of section 40(b). Where certain loans, originally shown to be from third parties, were disclosed by the partners as their own concealed

income, interest paid on such loans must be held to be hit by section 40(b) [*CIT v A. V. Joshi & Sons*, (1986) 158 ITR 71 (Cal)].”.

Page 1477: section 40(b):

After serial No. (4), giving illustrative cases where interest was held hit by section 40(b) and, therefore, not allowable, *add*,—

(5) Partner representing his HUF in the firm—interest on loans advanced in individual capacity—payment held hit by section 40(b) [*CIT v Chandu Lal Surajpal*, (1986) 157 ITR 346 (All). Also see, *CIT v Hari Nath & Co.*, (1987) 168 ITR 440 (All); *Chandmul Rajgarhia v CIT*, (1987) 164 ITR 486 (Pat); *Chandmull Rajgarhia v CIT*, (1987) 167 ITR 433 (Pat)].

(6) One L became a partner as the executrix of the estate of her late husband—interest paid by the firm on amount advanced by her in her individual capacity—payment held hit by section 40(b) and therefore not allowable [*CIT v Khoday Eswarsa & Sons*, (1985) 152 ITR 423 (Karn)]. Also see *Shri Ramanji & Co. Textiles v CIT*, (1986) 159 ITR 509 (Karn).

Page 1477: section 40(b):

In line 15 from bottom after “131 ITR 410 (AP)”, *add*,—“; *CIT v Dasa N. Govindaiah Setty & Co.*, (1986) 157 ITR 270 (AP)” [holding that interest was not hit by section 40(b) and was allowable].

Page 1477: section 40(b):

After serial No. (3), giving illustrative cases where interest was held not hit by section 40(b) and therefore allowable, *add*,—

“(4) V was a partner in his individual capacity—interest paid to V’s HUF—interest held not hit by section 40(b) [*Venkatesh Emporium v CIT*, (1982) 137 ITR 593 (Mad). Also see, *T. M. N. M. Somasundara Nadar Sons v CIT*, (1982) 137 ITR 815 (Mad); *CIT v Nagappa Trading Corpn.*, (1985) 22 Taxman 303 (Mad)].

(5) V was a partner representing his HUF—interest paid by firm to V in his individual capacity—payment not hit by section 40(b) [*CIT v Pannalal Hiralal & Co.*, (1984) 146 ITR 549 (Bom)].

(6) One of the partners made a will in respect of certain amounts in his capital account in the firm—trustee to administer the estate for the benefit of the minor grandsons till the youngest attained majority—after the death of the partner, two minor grandsons were admitted to the benefits of the partnership—interest paid by the firm on the amount standing to the credit of the estate account—held not hit by section 40(b) [*CIT v Colombo Stores*, (1984) 149 ITR 108 (Mad)].

(7) V was a partner in a firm representing his HUF—interest paid to V on monies advanced by him from his individual funds—held, payment not hit by section 40(b) and therefore could not be disallowed [*Chhotalal & Co. v CIT*, (1984) 150 ITR 276 (Guj—FB), overruling *CIT v Sajjanraj Divanchand*, (1980) 126 ITR 654 (Guj)]. Also see, *N. T. R. Estate v CIT*,

(1986) 157 ITR 285 (AP); *CIT v Narbharam Popatbhai & Sons*, (1987) 166 ITR 534 (MP—FB) **overruling** *Jalam Chand Mangilal v CIT*, (1982) 138 ITR 347 (MP) and *Jalam Chand Mangilal v CIT*, (1982) 138 ITR 343 (MP)].

(8) *Karta* of HUF was a partner in his individual capacity—interest paid by firm to the HUF—held not hit by section 40(b) [*CIT v Indradaman Amratlal*, (1985) 156 ITR 493 (Guj)].

The above controversy has now been set at rest by the enactment of *Explanations* 2 and 3 to section 40(b) by the Taxation Laws (Amendment) Act, 1984, with effect from 1st April, 1985. The import of these *Explanations* has been elaborated in paragraphs 7.1 to 7.5 of the departmental circular No. 397, dated 16th October, 1984, which have been reproduced at pages 6187-6188, *ante*.

In *N. T. R. Estate v CIT* [(1986) 157 ITR 285, 290 (AP)], "it has been held that these *Explanations* are merely clarificatory in character and must, therefore, govern the assessments even prior to assessment year 1985-86. Also see, *Balchand Hashmatrai & Co. v CIT*, (1986) 161 ITR 121 (MP).".

Page 1478: section 40(b):

After line 2 from top, *add*,—

"Payment as well as receipts of interest by a partner—only the net amount to be considered.—See, page 1189 of Vol. 2 and additions made thereto in this Vol.".

Page 1478: section 40(c):

At the end of paragraph titled "*Legislative amendment*", *add*,—

"Section 40(c) has also been amended by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985, *i.e.*, for and from assessment year 1985-86. The scope and effect of these amendments have been elaborated in paragraphs 14.1, 14.2 and 14.3 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages lxxii-lxxiii of Vol. 4.".

Page 1478: section 40(c):

At the end of paragraph titled "*Provisions of section 40(c) have over-riding effect*", *add*,—

"Where a particular expenditure is of the nature covered by section 40(c), the allowability or otherwise of such expenditure has to be tested on the touchstone of section 40(c) [see, *Mehra Parikh & Co. Pr. Ltd. v CIT*, (1987) 163 ITR 126 (Guj)].".

Page 1479: section 40(c):

At the end of line 11 from top, *add*,—"But in *CIT v Prakash Beedies (P.) Ltd* [(1986) 161 ITR 241 (Karn)], the assessee-company paid royalty to a firm constituted of three directors of the company as partners. It was held that the payment to the firm was payment to its partners who were directors of the company. Provisions of section 40(c) were attracted and

the overall ceiling limit, then Rs. 72,000 for each director, did operate automatically. The sum in excess of Rs. 2,16,000 [72,000×3] was disallowed.”.

Page 1479: section 40(c)(i):

Before line 7 from bottom, *add*,—

“The requirement of section 40(c)(i) is that a particular expenditure must result directly or indirectly in the provision of any benefit, etc., to the director or other vulnerable person. What that section requires is not that anything connected with the expenditure must be connected in some way to the benefit of the director, etc. [*CIT v Ambal Mills Pr. Ltd.*, (1983) 142 ITR 771 (Mad)]. In that case, the company borrowed money from bank and paid interest thereon. A managing director was found to have overdrawn money from the company and no interest was charged by the company. The Income-tax Officer estimated the overdrawals and calculated interest on such amount at the rate on which borrowals were made. The so worked interest was disallowed under section 40(c). It was held that section 40(c) could not be so invoked because the connection for invoking that section between the expenditure as such (in this case, the payment of interest on borrowed capital) and the benefit to the director had not been established.”.

Page 1480: section 40(c):

After line 19 from top, *add*,—

“In *CIT v Chotanagpur Engineering Works Ltd* [(1987) 163 ITR 705 (Pat)], it has been held that the interest paid by the assessee-company, at normal rates, on deposits by directors, their relatives, etc., is not an “expenditure” within the meaning of section 40(c). This is so because wherever the intention of the legislature was to cover also interest payment it has specifically mentioned such payment, as has been done in section 40(b). It seems that any such generalisation needs scrutiny.

In *Indian Oxygen Ltd. v CIT* [(1987) 164 ITR 466 (Cal)], gratuity paid to a retired director in excess of the overall ceiling limit was held not allowable by reason of the provisions of section 40(c) even though the gratuity is exempt in the hands of the recipient-director to the extent prescribed by section 10(10).”.

Page 1481: section 40(c):

At the end of the paragraphs titled “Overall ceiling limit”, *add*,—

“The overall ceiling limit referred to in (A) and (B) above was operative for assessment years 1972-73 to 1984-85. For and from assessment year 1985-86, the ceiling limit of Rs. 72,000 referred to in (A) above has been raised to Rs. 1,02,000 and that of Rs. 6,000 referred to in (B) above has been raised to Rs. 8,500.

In *Andhra Sugar Ltd. v CIT* [(1987) 165 ITR 259 (AP)], the liability to make payment of remuneration to directors related to assessment year

1971-72. But such liability was claimed as a deduction for assessment year 1972-73 as the sanction of the Company Law Board in that regard was obtained during the previous year relevant thereto. It was held that although the ceiling limit became operative for and from assessment year 1972-73, that ceiling limit could not be applied in the instant case because the remuneration pertained to the assessment year 1971-72.”

Page 1482: section 40(c):

In line 3 from bottom, after “118 ITR 752 (Cal)]”, *add*,—“The paucity of profits will not be the deciding factor in allowing or disallowing the remuneration paid to a director, etc. [*Construction Machinery Pr. Ltd. v CIT*, (1987) 164 ITR 394 (Cal)].”.

Pages 1482-1483: section 40(c):

At the end of the paragraphs titled “*Excessiveness or unreasonableness, how to be judged*”, *add*,—

“The enquiry directed by section 40(c)(i) is an enquiry involving an appreciation and evaluation of facts from a particular point of view, namely, the legitimate business needs of the assessee-company and the benefits which might be said to be derived by the assessee-company by the outlay of the expenditure in question [*Mycol (Pr.) Ltd. v CIT*, (1984) 150 ITR 609 (Mad)].”.

Page 1484: section 40(c):

After line 15 from top, *add*,—

“Where the Income-tax Officer did not examine the assessee-company’s claim about deduction of remuneration to the managing director with reference to the provisions of section 40(c), the Tribunal was held justified in remanding the matter to the Income-tax Officer for examining the same in the light of the provisions of section 40(c) [*CIT v Sarabhai Sons Ltd.*, (1983) 143 ITR 473 (Guj)].

Section 40(c) need not be invoked if the concerned expenditure is not allowable under section 37.—Unless an expenditure first gets qualified as an expenditure within the meaning of section 37, that is to say, unless it can be shown expended wholly or exclusively for the purposes of the business or profession, it cannot be allowed in computing the income chargeable under the relevant head. In case it satisfies this test, then it stands to get curtailed under section 40(c), for, the *non obstante* clause therein clearly postulates that despite being allowable under section 37, in the case of a company, it has to satisfy the test of section 40(c) as well. So, in working analysis, section 37 has to apply first and thereafter section 40(c) [*Ess Ess Kay Engg. Co. Pr. Ltd. v CIT*, (1985) 151 ITR 636, 651 (Pun)]]. In that case, the commission paid by the assessee-company was disallowed by the Income-tax Officer under section 40(c). The Tribunal took the view that the commission was not allowable under section 37 itself because no

specific services were rendered by the recipient. That view was upheld by the High Court.”.

Page 1485: section 40(c):

After serial No. (7), giving illustrative cases where partial disallowance was upheld, *add*,—

“(8) *Mycol (Pr.) Ltd. v CIT*, (1985) 150 ITR 609 (Mad) [Remuneration and commission was paid to the wife of the chairman who was appointed as a managing director—disallowance of commission upheld].

(9) *Amritsar Transport Co. Pr. Ltd. v CIT*, (1986) 161 ITR 18 (Punj) [Salary paid to two sons of a director of the assessee-company—part disallowance upheld].”.

Page 1486: section 40(c):

After serial No. (7), giving the illustrative cases where partial disallowance of remuneration, etc., to directors, etc., was not upheld as justified, *add*,—

“(8) *Kashiprasad Carpets Pr. Ltd. v CIT*, (1984) 148 ITR 710 (All) [Commission paid to directors—part disallowance was held not justified].

(9) *CIT v United Supply Agency (P.) Ltd.*, (1985) 155 ITR 262 (Cal) [Remuneration paid to the manager who was a son of the director—evidence showed that the remuneration was reasonable—part disallowance was not upheld]. Also see, *CIT v Karam Chand Thapar & Bros. P. Ltd.*, (1986) 157 ITR 212 (Cal).”.

Page 1488: section 40(c)(iii):

In lines 29-30 from top, after “119 ITR 830 (Mad)].”, *add*,—“But according to Delhi High Court in *Addl. CIT v Delhi Cloth & General Mills Co. Ltd* [(1983) 144 ITR 275 (Del)], section 40(c)(iii) as substituted by the Finance Act, 1964, was held applicable for assessment year 1964-65 irrespective of the period constituting the relevant previous year.”.

Page 1488: section 40(c)(iii):

At the end of line 9 from the bottom, *add*,—“The decision of the Calcutta High Court in *CIT v Britannia Industries Co. Ltd* [(1982) 125 ITR 35 (Cal)], cannot be read as an authority that in all cases for the purpose of section 40(c)(iii), the value of the perquisite in the hands of the employee, computed in accordance with relevant rules, must be taken. In order to disallow an expenditure incurred by a company in the provision of any benefit, etc., to an employee, it is not necessary that the value of the perquisite, etc., in the hands of the employees computed in accordance with relevant rules must exceed one-fifth of the salary. For that purpose, it is the entire expenditure incurred by the employer that has to be taken into account [*Bombay Burmah Trading Corpn. Ltd. v CIT*, (1984) 145 ITR 793 (Bom)].”.

The expression 'benefit' or 'amenity' or 'perquisite' occurring in section 40(c)(iii), as substituted by the Finance Act, 1964, must be read in the context in which the words are used [*CIT v Duncan Bros. & Co. Ltd.*, (1983) 140 ITR 335, 342 (Cal)]. In that case, medical insurance policies were taken out by the assessee-company on the individual life of its employees and premia was paid. It was held that the premia so paid did not result directly or indirectly in the provision of any benefit, amenity or perquisite to the employees within the meaning of the then section 40(c)(iii) and could not be taken into account in computing the amount disallowable under that section.

Reimbursement of medical expenses incurred by an employee would not result directly or indirectly in the provision of any benefit or amenity or perquisite to the employee within the meaning of the then section 40(c)(iii) and could not be disallowed [*Simon Carves India Ltd. v CIT*, (1983) 141 ITR 712 (Cal); *CIT v Alkali & Chemical Corpn. of India Ltd.*, (1986) 158 ITR 58 (Cal)].

Similarly, expenditure incurred on repairs of the flats let out to assessee's employees cannot be said to have conferred any benefit, etc., to the employees within the meaning of the then section 40(c)(iii) [*CIT v Davidson of India Pr. Ltd.*, (1984) 148 ITR 544 (Cal)].

The words 'seven thousand five hundred rupees or less' in the second proviso to section 40(c)(iii) would include a nil amount as well and these could not be understood to mean from Re. 1 to Rs. 7,500. The benefit of the above proviso is also to be given in a case where no part of the amount paid is chargeable under the head 'Salaries'. In that view of the matter, the value of the perquisite paid to the employees of the assessee's overseas branches [*Bombay Burmah Trading Corpn. Ltd. v CIT*, (1984) 145 ITR 793 (Bom)] or perquisite given to a foreign technician whose salary income was exempt under section 10(6)(vii) [*CIT v Borosil Glass Works Ltd.*, (1986) 161 ITR 286 (Bom); *CIT v Indopol Ltd.*, (1987) Taxation 85(3)-304 (Bom)] could not be disallowed."

Page 1498: section 40A:

After serial No. IV. under the heading "*Legislative amendments*", add,—

"V. *By the Finance Act, 1984.*—By this Act, sections 40A(5) and 40A(6) have been amended with effect from 1st April, 1985. Further, sub-sections (9), (10) and (11) have been inserted in section 40A with retrospective effect from 1st April, 1980.

For the scope and effect of these amendments, reference may be made to pages lxxv-lxxix of Vol. 4.

VI. *By the Taxation Laws (Amendment) Act, 1984.*—By this Act, clause (b) of Explanation to section 40A(5) has been amended with effect from 1st April, 1985. This amendment was consequential to the insertion, by that Act, of section 17(2)(vi).

VII. *By the Finance Act, 1985.*—By this Act, the amendment made in section 40A(5) by the Taxation Laws (Amendment) Act, 1984, has been

discontinued with effect from 1st April, 1985. Thus, amendment at No. VI above was still-born. Further, section 40A(8) has been omitted with effect from 1st April, 1986.

Also, a new sub-section (12) has been inserted in section 40A with effect from 1st April, 1986.”

Page 1498: section 40A:

At the end of the page, *add*,—

“Read with the marginal note of section 40A, the *non obstante* clause of section 40A(1) has an overriding effect over the provisions of any other section by providing that the provision of section 40A will have effect notwithstanding anything to the contrary contained in any other provision relating to the computation of income under the head ‘Profits and gains of business or profession’ [*Shree Sajjan Mills Ltd. v CIT*, (1985) 156 ITR 585, 597 (SC)].”

Page 1500: section 40A(2):

Before line 11 from bottom, *add*,—

“The words ‘any person’ in section 40A(2)(a) includes any member of the family or any relative of such member where the assessee is a Hindu undivided family. In the facts of *Ved Prakash M. Patel v CIT* [(1987) 65 CTR (MP) 21], the Tribunal recorded findings that the legatees to whom certain payments were made were relatives and members of the assessee-family and, therefore, the provisions of section 40A(2) were attracted so as to disallow a portion of such payment. The Tribunal’s view was upheld by the High Court.”

Page 1500: section 40A(2):

At the end of the paragraph titled “No application to section 40(c)(i) expenditure”, *add*,—“Also see, *CIT v Ayurvedic Sevashram (P.) Ltd.*, (1986) 159 ITR 112 (Raj); *CIT v Ayurved Sevashram Ltd.*, (1986) 29 Taxman 522 (Raj).” [holding that section 40A(2) has no application to an expenditure falling under section 40(c)(i)].

Page 1502: section 40A(2):

After serial No. (3), giving illustrative cases about section 40A(2), *add*,—

“(4) The assessee-firm paid commission to the husband of one of its partners. The Tribunal found that the commission was excessive and not allowable. That finding was sustained by the High Court [*Synpro Industries v CIT*, (1984) 146 ITR 176 (MP)].

(5) The assessee-company paid commission to its directors. A part of the commission was disallowed by the Income-tax Officer but such disallowance was vacated by the Tribunal. Tribunal’s order was upheld [*CIT v Skyline Industries Pr. Ltd.*, (1985) 154 ITR 373 (MP)].

(6) The assessee-firm paid commission to the wife of one of its partners at the rate of 9 per cent. The Tribunal held that commission in excess of

4 per cent. was excessive or unreasonable having regard to the circumstances specified in section 40A(2)(a). The High Court upheld [*Ganesh Soap Works v CIT*, (1986) 161 ITR 876 (MP)].”

Page 1505: section 40A(3):

At the end of the paragraph titled “*Provisions not ultra vires*”, add,—
“Also see, *Attar Singh Gurmukh Singh v ITO*, (1982) 136 ITR 589 (Punj).”
[holding that section 40A(3) is not unconstitutional].

Page 1506: section 40A(3):

In line 6 and 7 from top, after “129 ITR 671 (Punj)”, add,—“; *Hari Chand Virender Paul v CIT*, (1983) 140 ITR 148 (Punj); *Kanti Lal Purshottam & Co. v CIT*, (1985) 155 ITR 519 (Raj); *CIT v Ram Chand Gobind Prasad*, (1985) 156 ITR 766 (Pat); *Fakri Automobiles v CIT*, (1986) 160 ITR 504 (Raj); *Venkata Satyanarayana Timber Depot v CIT*, (1987) 165 ITR 253 (AP); *Karyana Association v CIT*, (1983) Taxation 68(1)-33 (Punj); *Rattan Mechanical Works v CIT*, (1983) Taxation 69(1)-24 (Punj); *Kejriwal Iron Stores v CIT*, (1987) 31 Taxman 311 (Raj); *Nahgi Lal v CIT*, (1987) 167 ITR 139 (Raj); *Badrilal Phool Chand Rodawat v CIT*, (1987) 167 ITR 404 (Raj)” [holding that expenditure on purchases of stock-in-trade, raw materials, etc., is covered under section 40A(3)].

Page 1506: section 40A(3):

After line 16 from top, add,—

“**Extent of the payment determinative.**—Section 40A(3) concentrates on the size and manner of the payment. What is pertinent to the enquiry under that section is whether the payment for an item of business expenditure is in a sum exceeding Rs. 2,500 and further whether the payment is by means of a crossed cheque or a bank draft. Where different items of expenditure are included in a single bill, it will not be correct to dissect the bill and find out whether each item of expenditure is above Rs. 2,500 or less than Rs. 2,500. The determinative factor is whether the payment in cash has been in a sum exceeding Rs. 2,500 [*Addl. CIT v Shree Shanmugha Gunny Stores*, (1984) 146 ITR 600 (Mad)].

Cash payments may be appropriated towards non-vulnerable purchases.—In the facts of *Addl. CIT v Roshan Dass Briz Bhushan* [(1982) 136 ITR 816 (Del)], the assessee was held entitled to appropriate cash payments exceeding Rs. 2,500, even though made on or after 1st April, 1969, towards purchases effected prior to 1st April, 1969, and, therefore, not hit by section 40A(3). It seems that their Lordships attention was not drawn to the first proviso to section 40A(3) which places more stress on the date of payment and not the date of incurring the liability.”

Page 1507: section 40A(3):

After line 28 from top, *add*,—

“In the facts of the following cases, although cash payment in excess of Rs. 2,500 was made, mitigating circumstances of rule 6DD were found to exist so as to take the disallowance out of the purview of section 40A(3):—

- (1) *CIT v Sawaran Singh Balbir Singh*, (1982) 136 ITR 595 (Punj) [oral agreement between the assessee and the recipient for payment in cash—rule 6DD(j) held applicable].
- (2) *CIT v Satish Chandra*, (1983) 143 ITR 330 (All) [certificates from the suppliers to whom cash payments were made to the effect that they were not willing to accept cheques were relied on by the Tribunal].
- (3) *CIT v Ahmad Hussain*, (1984) 150 ITR 373 (All) [payments in cash exceeding Rs. 2,500 were made to a labour contractor in pursuance to an agreement entered into in the year 1957—exceptional circumstance of rule 6DD(c) was found to exist].
- (4) *Kanti Lal Purshottam & Co. v CIT*, (1985) 155 ITR 519 (Raj) [payments in cash were made to other traders for agricultural produce under the *bona fide* belief that the payments were covered by rule 6DD and the genuineness of the payments was established].
- (5) *CIT v S. B. Saini Bros.*, (1986) 161 ITR 415 (Punj) [cash payments were made as a large number of cheques issued by the assessee were dishonoured by the bank and the sellers insisted upon cash payments].
- (6) *CIT v Ashish Coal Coke Traders*, (1987) 163 ITR 174 (MP) [payments in respect of loading charges and also to contractors were made due to absence of banking facilities in the village where the assessee's business was carried on—Tribunal took the view that the case was covered by exceptional circumstances as per rule 6DD(h)].
- (7) *CIT v Mahendra & Co. Ltd.*, (1987) 163 ITR 316 (Raj) [where cash payment was made at the request of the payee who was also an assessee and a confirmatory letter was filed—Tribunal took the view that the cash payment was made under exceptional circumstances].
- (8) *CIT v Chandmull Radhakishun*, (1987) 163 ITR 697 (Pat) [Tribunal's finding that the assessee had no bank account and payments through cheques were not acceptable].
- (9) *Venkata Satyanarayana Timber Depot v CIT*, (1987) 165 ITR 253 (AP) [absence of bank account in places where cash payments were made for purchase of raw material].
- (10) *CIT v Union Agencies*, (1987) 166 ITR 529 (Del) [cash payment by the assessee sub-distributor to the distributor of dairy products because the latter insisted upon cash payment].
- (11) *Badrilal Phool Chand Rodawat v CIT*, (1987) 167 ITR 404 (Raj) [genuineness of the payment and the identity of the payee

established—first dealing of the assessee with the payee—payment day a bank holiday—payment held covered by exceptional circumstances of rule 6DD(j)].

However, in the facts of the following cases, the disallowance under section 40A(3) was upheld—

- (1) *Porwal Udhyog (India) v CIT*, (1982) 135 ITR 591 (MP) [commission in excess Rs. 2,500 paid in cash—assessee failed to establish any exceptional or unavoidable circumstances].
- (2) *Hari Chand Virender Paul v CIT*, (1983) 140 ITR 148 (Punjab) [assessee's plea that payment in respect of goods purchased on credit was demanded in cash after banking hours was held not to be a mitigating circumstance under rule 6DD(j)].
- (3) *Registhan Pr. Ltd. v CIT*, (1984) 146 ITR 620 (Raj) [general statement of the assessee that the cash payments were made as the payee was in the process of being wound up was held not to be treated as an exceptional circumstance].
- (4) *Narayan Bijoy Kumar v CIT*, (1987) 163 ITR 695 (Pat) [assessee merely producing a certificate showing an understanding between the assessee and the payee about cash payment].
- (5) *Bhilai Motors v CIT*, (1987) 167 ITR 147, 151 (MP) [mere statement by the assessee that the seller insisted upon payment in cash].

Pages 1507-1508: section 40A(3):

At the end of paragraph titled "*Question of law or of fact*", add,—

"The question whether the facts proved constituted exceptional circumstances as contemplated by rule 6DD(j) so as not to attract the mischief of section 40A(3) is one of law [*CIT v Suraj Bhan & Co.*, (1984) 148 ITR 743 (Punjab)].

Where the question about applicability of rule 6DD(j) was not considered by the Tribunal, the same cannot, in a reference, be agitated before the High Court [*CIT v Ram Chand Gobind Prasad*, (1985) 156 ITR 766 (Pat)].

Also see, *CIT v New Standard Automobiles*, (1987) 63 CTR (Del) 4."

Page 1515: section 40A(3):

At the end of the page, add,—

"[The above circular has been considered in *CIT v Trinity Traders*, (1987) 163 ITR 381 (Guj) and in *Navsari Waste Cotton Products v CIT*, (1987) 163 ITR 378 (Guj). In those cases of earlier periods, even though that circular was neither considered by the Income-tax Officer nor by the first and the second appellate authorities, the matter was remanded to the Tribunal for fresh determination in the light of the above circular after giving opportunity to the parties to lead evidence in that regard]."

Page 1517: section 40A(5):

After line 30 from top, *add*,—

“Legislative amendments.—Section 40A(5) has effectively been amended by the Finance Act, 1984, with effect from 1st April, 1985.

As a result of the amendment of the first proviso to section 40A(5)(a), the monetary ceiling of Rs. 72,000 has been raised, for and from assessment year 1985-86, to Rs. 1,02,000.

As a result of the amendments in section 40A(5)(c)(i), the monetary limits have been raised from Rs. 5,000 to Rs. 7,500 per month and the annual ceiling of Rs. 60,000 to Rs. 90,000. The raised ceilings are applicable for and from assessment year 1985-86.

The newly inserted second proviso to section 40A(5)(c)(i) makes it clear that in relation to any month or part thereof comprised in any previous year referred to in the first proviso to section 40A(5)(c)(i) as is relevant to assessment year commencing on the 1st day of April, 1985, or any subsequent assessment year, the monetary ceiling of Rs. 5,000 in the said first proviso is to be raised to Rs. 7,500.

The discussion at pages 1517-1523 has to be read subject to the amended figures, wherever applicable.

It may further be noted that the amendments made in section 40A(5) by the Taxation Laws (Amendment) Act, 1984, were made of no force as a result of subsequent amendments made by the Finance Act, 1985, as these never came into effect.”.

Page 1518: section 40A(5):

After line 6 from top, *add*,—

“On a perusal of section 40A(5)(c)(i), it is apparent that limits have been fixed under the said section for deductions which can be claimed in respect of payments to an employee as also a former employee. An employee can be paid up to Rs. 7,500 (up to 31-3-1985, Rs. 5,000) per month which could be claimed as deduction. A former employee can be paid in aggregate or at a time up to Rs. 90,000 (up to 31-3-1985, Rs. 60,000) in the year. The section itself indicates that an employee who retires during a particular previous year would be a former employee.

Therefore, it is possible for a person to be an employee for a part of the relevant previous year, *i.e.*, up to the date of his retirement. For that period, he has to be treated as an employee and all payments made to him as an employee would be allowed as a deduction within the permissible monthly limit. After that period, when such an employee retires, he has to be treated as a former employee and payments made to him as a former employee again ought to be deductible within the permissible limit. Any other construction of the said section under which such an employee is treated only as an ‘employee’ or as a ‘former employee’ in the year in question would render one part of the said section or the other nugatory [*Hindustan Motors Ltd. v CIT*, (1985) 156 ITR 223, 227 (Cal)]. In that case, the assessee-company paid to its employee, who retired with effect

from 1st September, 1973, a sum of Rs. 22,000 as salary for 5 months and a sum of Rs. 61,600 on account of retirement benefits including gratuity. It was held that the sum of Rs. 22,000 was fully allowable being within the limit (5×5000) prescribed in the former part of section 40A(5)(c)(i). Out of Rs. 61,600, a sum of Rs. 1,600 was hit by the latter part of section 40A(5)(c)(i) and could be disallowed.

House rent allowance paid to a managing director [*CIT v Toshiba Anand Lamps Ltd.*, (1984) 145 ITR 563 (Ker)] or car allowance paid to the employee for the purpose of repairs to the car [*Travancore Tea Estates Co. Ltd. v CIT*, (1985) 153 ITR 444, 455 (Ker); *Travancore Tea Estates Co. Ltd. v CIT*, (1985) 154 ITR 745 (Ker)] do constitute 'salary' within the contemplation of section 40A(5)(a)(i)."

Page 1518: section 40A(5):

At the end of the paragraphs titled "*Limitation on perquisites also retained*", add,—“The Kerala decision [24 CTR (Ker) 87=138 ITR 1 (Ker)] has been followed in *CIT v Malayalam Plantations Ltd* [(1987) 168 ITR 63 (Ker)].

Items (iv) and (v) above indicate that the payment made by the assessee on behalf of its employee either under an obligation or voluntarily must finally enure to the benefit of the employee and he must have a right therein [*CIT v Amco Batteries Ltd.*, (1984) 150 ITR 48 (Karn)]. In that case, the assessee took accident insurance policy in relation to personal accident or death by accident of some of its employees and paid premia thereon. Under the terms of the policy, the insured was the assessee-company and not the employees. The insured amount was payable to the assessee-company and the employees had no right to claim the amount payable under the policy. It was held that the premia paid could not be treated as a perquisite for the purposes of section 40A(5). Also see, *CIT v Bharat Ram Charat Ram Pr Ltd.*, (1986) 157 ITR 199 (Del); *CIT v J. B. Advani & Co. (Mysore) (Pr.) Ltd.*, (1987) 163 ITR 638 (Karn)."

Page 1519: section 40A(5):

At the end of (iii) of the paragraph titled "*Where the limitations of section 40A(5) have no application*", add,—“Also see, *CIT v Coromandel Fertilisers Ltd.*, (1985) 156 ITR 283 (AP); *CIT v Borosil Glass Works Ltd.*, (1986) 161 ITR 286 (Bom)” [holding that salary wholly exempt is also covered by this clause].

Pages 1519-1520: section 40A(5):

At the end of the paragraph titled "*Allowances in cash whether included in 'perquisites'?*", add,—

“In the facts of the following cases, allowances in cash were held not included in 'perquisites' as contemplated by section 40A(5)(a)(ii)/ the then section 40(a)(v):

- (1) *Indian Leaf Tobacco Development Co. Ltd. v CIT*, (1982) 137 ITR 827 (Cal) [re-imbursement of medical expenses incurred by an employee]. Also see, *CIT v National & Grindlays Bank Ltd.*, (1984) 145 ITR 457 (Cal); *Instalment Supply Pr. Ltd. v CIT*, (1984) 149 ITR 457 (Del); *Alkali & Chemical Corporation of India Ltd. v CIT*, (1986) 161 ITR 820 (Cal); *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 558 (Cal); *CIT v Escorts Ltd.*, (1987) 59 CTR (Del) 284; *CIT v Darjeeling Co. Ltd.*, (1984) Tax LR 483 (Cal); *CIT v Mercantile Bank Ltd.*, (1987) 63 CTR (Bom) 79.
- (2) *CIT v Warner Hindustan Ltd.*, (1984) 145 ITR 24 (AP) [house rent allowance, conveyance allowance, club fees and medical bills re-imbursed to the employee]. Also see, *CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217 (AP).
- (3) *CIT v Singareni Collieries Co. Ltd.*, (1984) 150 ITR 67 (AP) [bonus paid to employees in cash]. Also see, *CIT v Yorkshire Insurance Co. Ltd.*, (1986) 162 ITR 565 (Bom).
- (4) *Travancore Tea Estates Co. Ltd. v CIT*, (1985) 153 ITR 444 (Ker) [cash paid to employee by way of marriage allowance]. Also see, *Travancore Tea Estates Co. Ltd. v CIT*, (1985) 154 ITR 745 (Ker).
- (5) *CIT v J. Govindram Pr. Ltd.*, (1987) 163 ITR 528 (Bom) [cash payment by way of gratuity to a director].
- (6) *CIT v General Marketing & Mfg. Co.*, (1987) 165 ITR 566 (Cal) [cash payment made by the assessee to its employees to re-imburse them for the expenses incurred by way of house rent, medical expenses and salaries of gardener and watch and ward employee].
- (7) *CIT v Eastern Assam Tea Co. Ltd.*, (1984) 41 CTR (Cal) 361 [cash allowances to employees for servants and conveyances].

Although such cash allowances have been held not to constitute 'perquisites', these may well come under 'salary' as contemplated by section 40A(5)(a)(i).".

Page 1521: section 40A(5):

After line 8 from top, add,—

"In *CIT v Warner Hindustan Ltd* [(1984) 145 ITR 24 (AP)], it was found by the Tribunal as a fact that the employee, when departing on leave, handed over possession of the house to the assessee-company. It was held that the perquisite value of the rent-free accommodation during the period of leave of the employee could not be considered for the purpose of disallowance under section 40A(5).

But the expenditure incurred by the assessee in the maintenance of its bungalows in which its employees had been permitted to reside free of rent and the depreciation on such bungalows are to be treated as 'perquisites' for

the purpose of disallowance under section 40A(5)(a)(ii) [*Travancore Tea Estates Co. Ltd. v CIT*, (1985) 154 ITR 745 (Ker)].”.

Page 1522: section 40A(5):

At the end of line 9 from top, *add*,—“In that case, the Gujarat High Court had taken the view that the headwise limit prescribed under section 40A(5)(c) in relation to salary and perquisite falling under section 40A(5)(a) did not apply in respect of an employee who was also a director referred to in the first proviso to section 40A(5)(a). That decision in *CIT v Bharat Vijay Mills Ltd* [(1981) 128 ITR 633 (Guj)] has been dissented from in *Travancore Rayon Ltd. v CIT* [(1986) 162 ITR 732 (Ker)], holding that where the amounts paid to the managing director during the relevant accounting year was solely by way of salary and perquisite and no other amount was paid so as to attract the provisions of section 40(c), the expenditure could be allowed only with reference to section 40A(5) and section 40(c) shall have no application. Also see, *CIT v Warner Hindustan Ltd.*, (1984) 145 ITR 24 (AP); *CIT v South India Viscose Ltd.*, (1987) 163 ITR 674 (Mad).”.

Page 1522: section 40A(5):

At the end of line 15 from top, *add*,—“The decision in *International Instruments Pr. Ltd. v CIT* [(1981) 130 ITR 315 (Karn)] has been followed in *CIT v International Instruments P. Ltd* [(1983) 144 ITR 936 (Karn)], holding that section 40A(5) applies to the remuneration paid to a director of the assessee-company.”.

Page 1522: section 40A(5):

At the end of the paragraph titled “Which provision appropriate in case of director-cum-employee?”, *add*,—“The decision in *Addl. CIT v Tarun Commercial Mills Ltd* [(1978) 113 ITR 745 (Guj)] has been followed in *CIT v Maneklal Harilal Spng. & Mfg. Co. Ltd* [(1983) 141 ITR 129 (Guj)].”.

Page 1523: section 40A(6):

After the paragraph titled “Limitations on allowability of fees for services rendered by some ex-employees—section 40A(6)”, *add*,—

“The limit of Rs. 60,000, which was operative for assessment years 1972-73 to 1984-85, has been raised to Rs. 90,000 for and from assessment year 1985-86 as a result of amendment of section 40A(6) by the Finance Act, 1984, with effect from 1st April, 1985.”.

Pages 1523-1525: section 40A(7):

On the subject of allowability of “Provision made for gratuity—section 40A(7)”, operative for and from assessment year 1973-74, reference may be made to—

(1) *Hindustan Aluminium Corpn. Ltd. v CIT*, (1983) 144 ITR 474

- (Cal) [provision for gratuity was held not deductible as the same was not transferred to a fund as required by section 40A(7)].
- (2) *Jiwajirao Sugar Co. Ltd. v CIT*, (1983) 144 ITR 729 (MP), special leave petition dismissed by the Supreme Court: (1984) 150 ITR (St.) 82 [provision for gratuity, held not deductible because the prescribed conditions of section 40A(7) were not fulfilled]. Also see, *Cowasji & Sons v CIT*, (1987) 166 ITR 445 (MP).
- (3) *CIT v New Swadeshi Mills of Ahmedabad Ltd.*, (1984) 147 ITR 163 (Cal), **approved in** (1985) 156 ITR 585 (SC) [claim for estimated liability for payment of gratuity on actuarial basis without fulfilling conditions of section 40A(7), held not tenable].
- (4) *Pandian Roadways Corpn. Ltd. v CIT*, (1985) 152 ITR 496 (Mad), special leave petition granted by Supreme Court: (1985) 152 ITR (St.) 225 [gratuity liability relating to its employees transferred to the transferee was held not deductible as there was no direct payment of gratuity to the employees who had been transferred].
- (5) *CIT v G. T. N. Textiles Ltd.*, (1985) 155 ITR 5 (Ker) [provision for gratuity relating to an earlier year made in a subsequent year—held not deductible in the subsequent year]. Also see, *CIT v Periya Karamalai Tea & Produce Co. Ltd.*, (1987) 167 ITR 32 (Ker); *CIT v Haileburia Tea Estates Ltd.*, (1987) 167 ITR 254 (Ker).
- (6) *ITO v Tata Iron & Steel Co. Ltd.*, (1986) 159 ITR 938 (SC), setting aside *Tata Iron & Steel Co. Ltd. v ITO*, (1975) 101 ITR 292 (Bom) [case was sent back to the High Court for a fresh consideration in the light of the decision in *Shree Sajjan Mills Ltd. v CIT* [(1985) 156 ITR 585 (SC)] and to determine whether the second and third conditions of section 40A(7)(b)(ii) were also satisfied]. Also see, *CIT v Vanaz Engineering Pr. Ltd.*, (1986) 162 ITR 876 (SC); *CIT v Forbes Forbes Campbell & Co. Ltd.*, SLP (Civil) No. 20 of 1981: (1983) 144 ITR (St.) 11; *CIT v Motor & General Finance Ltd.*, SLP (Civil) No. 11466 of 1980: (1983) 142 ITR (St.) 8 (SC); *CIT v B. Mehta & Co.*, SLP (Civil) No. 7 of 1981: (1983) 143 ITR (St.) 59 (SC).
- (7) *CIT v Chackola Spng. Mills Ltd.*, (1987) Tax LR 1211 (Ker) [for deduction under section 40A(7), the conditions laid down in that regard must be satisfied—on facts, the Tribunal was directed to reconsider the right of the assessee to claim deduction for gratuity in the light of the Supreme Court ruling and the statutory provisions].

Section 40A(7) to an extent overridden by section 43B.—It may be noted that for and from assessment year 1984-85, section 43B has an overriding

effect over the provisions of section 40A(7). Under the provisions of section 43B, a deduction in respect of any sum payable by the assessee as an employer by way of contribution, *inter alia*, to any gratuity fund is to be allowed in computing the business income of that previous year in which such sum has been actually paid by him.

Page 1525: section 40A(7):

After line 28 from top, *add*,—

“Ban of section 40A(7) operates even where no provision has been made.—

Since the liability for payment of gratuity was made statutory, an assessee could claim a deduction in respect of estimated accrued liability for payment of gratuity even without making any provision therefor in the books of account of the assessee for any relevant previous year. An argument was advanced in *Shree Sajjan Mills Ltd. v CIT* [(1985) 156 ITR 585 (SC), **affirming** *CIT v Shree Sajjan Mills Ltd.*, (1984) 147 ITR 185 (MP)] that the ban under section 40A(7) would operate only where a provision is made by the assessee in his books and not where no such provision has been made. The argument was negated. The Supreme Court observed that such an interpretation would lead to an absurd result. For and from assessment year 1973-74, the allowability of gratuity depends only upon the fulfilment of the conditions laid down in section 40A(7) whether or not any provision has been made therefor. In taking that view, the decisions in *Peoples Engineering & Motor Works Ltd. v CIT* [(1981) 130 ITR 174 (Cal)] and *CIT v New Swadeshi Mills of Ahmedabad Ltd* [(1984) 147 ITR 163 (Cal)] have been approved. Also see, *Jivajirao Sugar Co. Ltd. v CIT*, (1984) 147 ITR 192 (MP); *Bharat General & Textile Industries Ltd. v CIT*, (1985) 153 ITR 747 (Cal); *Coimbatore Cotton Mills Ltd. v CIT*, (1985) 154 ITR 240 (Mad); *CIT v Perfect Pottery Co. Ltd.*, (1986) Taxation 81(3)-185 (MP); *CIT v Vijoy Kumar Veneet Kumar*, (1986) Tax LR 818 (Cal); *Perfect Pottery Co. (M.P.) Ltd. v CIT*, (1986) Taxation 82(3)-10 (MP).”

Page 1528: sections 40A(8) to 40A(12):

Before the text of section 41, *add*,—

“Section 40A(8), now omitted.—Section 40A(8) has been omitted by the Finance Act, 1985, with effect from 1st April, 1986. This section 40A(8) was operative for assessment years 1976-77 to 1985-86.

Imposition of restrictions on contributions by employers to non-statutory funds—sections 40A(9), 40A(10) and 40A(11).—The scope and effect of these sub-sections, which have been inserted by the Finance Act, 1984, with retrospective effect from 1st April, 1980, *i.e.*, for and from assessment year 1980-81, have been elaborated in paragraphs 16.1 to 16.5 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages lxxviii-lxxix of Vol. 4.

Sub-section (9) and (10) of section 40A have been held not violative.

of Article 14 of the Constitution [*Mysore Kirloskar Ltd. v Union of India*, (1986) 160 ITR 50 (Karn)].

Expenditure incurred in connection with certain proceedings under the 1961 Act—restriction on allowance—section 40A(12).—This section 40A (12) was inserted by the Finance Act, 1985, with effect from 1st April, 1986. Certain other consequential amendments were also made by that Act. The scope and effect of all these amendments have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Disallowance of expenditure incurred in connection with certain proceedings under the Income-tax Act.—**21.1** Under section 80VV of the Income-tax Act, any expenditure incurred by an assessee in respect of any proceedings before any income-tax authority or the Appellate Tribunal or any court relating to the determination of any liability under the Income-tax Act by way of tax, penalty or interest is allowed as a deduction in the computation of the taxable income, subject to a ceiling of Rs. 5,000. The Finance Act, 1985, has deleted the aforesaid provision and inserted a new sub-section (12) in section 40A of the Income-tax Act to provide that no deduction shall be allowed in excess of Rs. 10,000 for any assessment year in respect of any expenditure incurred by the assessee by way of fees or other remuneration paid to any person (other than an employee of the assessee)—

- (a) for services (not being services by way of preparation of return of income) in connection with any proceeding under the Income-tax Act before any income-tax authority or the Settlement Commission or the competent authority under Chapter XXA of the said Act or the Appellate Tribunal or any court;
- (b) for services in connection with any other proceeding before any court, being a proceeding relating to tax, penalty, interest or any other matter under the Income-tax Act; and
- (c) for any advice in connection with tax, penalty, interest or any other matter under the Income-tax Act.

21.2 The Finance Act, 1985, has also inserted a new sub-clause (ia) in clause (a) of sub-section (1) of section 58 of the Income-tax Act to provide that any expenditure of the nature referred to in sub-section (12) of section 40A of the Income-tax Act shall not be allowed as deduction in computing the income chargeable under the head "Income from other sources". The effect of this amendment is that no part of the expenditure of the nature referred to in clauses (a) to (c) of sub-section (12) of section 40A will be allowed as a deduction in computing the income chargeable under the head "Income from other sources". This prohibition will apply even in cases where such expenditure is not in excess of Rs. 10,000.

21.3 These amendments take effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'".

Pages 1530-1531: section 41:

After the paragraphs titled "*Legislative amendments*", *add*,—

"3. By the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986).—By this Act, sub-sections (2) and (2A) of section 41 and the *Explanations* thereunder have been omitted, and sub-sections (4) and (5) have been amended, with effect from 1st April, 1988. The scope and effect of these and other allied amendments have been elaborated in paragraphs 6.1 to 6.4 of departmental circular No. 469, dated 23rd September, 1986, which have been reproduced at pages 6062 to 6067, *ante*, in connection with section 32.

4. By the Finance Act, 1987.—This Act has amended section 41(5) by omitting the words 'or under the head "Capital gains"', from that section, with effect from 1st April, 1988. The omission is of consequential nature."

Page 1533: section 41(1):

In line 12 from bottom, after "(1975) 100 ITR 40 (All)", *add*,—""; *CIT v Thakurdas*, (1984) 147 ITR 549 (MP)" [holding that for invoking section 41(1), an actual allowance or deduction in an earlier year is a condition precedent].

As to the requisite conditions for invoking section 41(1), reference may also be made to *M. R. Dhawan v CIT*, (1984) 149 ITR 160, 168 (Del); *CIT v Haryana Co-operative Sugar Mills Ltd.*, (1985) 154 ITR 751 (Punj), special leave petition granted by the Supreme Court: (1985) 155 ITR (St.) 4; *CIT v Agarpura Co. Ltd.*, (1986) 158 ITR 78 (Cal).

Page 1534: section 41(1):

After line 9 from top, *add*,—

"In that view of the matter, where a debt due from the assessee was foregone by the creditor in a later year, it can be taxed under section 41(1) in such later year when it was foregone [*CIT v Manohar Bandhu*, (1984) 148 ITR 108 (Bom)]."

Page 1534: section 41(1):

Before line 2 from bottom, *add*,—

"Method of accounting not relevant.—The provisions of section 41(1) can be invoked in cases of assessee following cash system of accounting as also those following mercantile system of accounting on fulfilment of requisite conditions. The mere fact that the assessee follows mercantile system of accounting does not detract the applicability of section 41(1) [*CIT v Balabux Birla & Co.*, (1986) 157 ITR 759, 761 (Punj)].

Old books cannot be called upon for production.—Section 41(1) does not warrant a detailed enquiry whereby an assessee can be called upon to produce his books of account and other documents to establish his case, as in the case of a regular assessment. The allowance or deduction made in the assessment for any year can be ascertained from the order of assessment

of that year. The investigation envisaged under section 41(1) is only the verification of the orders of assessment for the earlier years in which the assessee had been granted the deduction or allowance [*CIT v Ancherry Pavoo Kakku*, (1986) 160 ITR 88, 92, 93 (Ker)].”.

Pages 1534-1535: section 41(1):

At the end of the paragraphs titled “*Section 41(1) concerns a trading liability and not other types of liability*”, add,—

“Where the assessee had not claimed nor obtained a deduction in respect of a security deposit treating it as a trading liability, section 41(1) cannot be invoked when such security deposit is refunded to the assessee [*CIT v A. V. M. Ltd.*, (1984) 146 ITR 355 (Mad)].”.

Page 1538: section 41(1):

After serial No. (9), giving illustrative cases about applicability or otherwise of section 41(1), add,—

“(10) The assessee pledged her stock-in-trade with a bank for getting overdraft. A portion of such goods were damaged due to carelessness of the bank staff and the balance was removed away by the bank employees. Loss or damage was allowed as a deduction in income-tax proceedings. The assessee filed a criminal complaint against the bank and the matter was ultimately compromised whereunder the bank wrote off the amount due from the assessee. It was held that the amount so written off was taxable under section 41(1) to the extent of loss or damage already allowed [*Mrs. Ethyl Saxena v CIT*, (1984) 146 ITR 518 (Del), special leave petition granted by the Supreme Court: (1985) 156 ITR (St.) 161].

(11) A retiring partner owed to the firm a sum of Rs. 20,831, which represented his share of accumulated loss. Such sum was foregone by the continuing partners. It was held that such foregone amount was not liable to be assessed under section 41(1) because no allowance or deduction was made in the assessee's hands [*CIT v N. Rudrappan*, (1984) 147 ITR 355 (Mad)]. Also see, *CIT v Chunilal M. Pandya*, (1986) 158 ITR 505 (Guj).

(12) The amount of cane price payable to the suppliers, which had not been claimed by them, was transferred to the profit and loss account. Section 41(1) was held attracted [*CIT v Haryana Co-operative Sugar Mills Ltd.*, (1985) 154 ITR 751 (Punj), special leave petition granted by the Supreme Court: (1985) 155 ITR (St.) 4].

(13) Allowance in respect of royalty payable to Government was granted to the assessee-firm. Thereafter, the business of the assessee-firm was taken over by another firm. Subsequent to that, the Government reduced the amount of royalty so payable. It was, on facts, held that the remission was made to the assessee-firm and the provisions of section 41(1) were attracted so as to include remission amount in the hands of the assessee-firm [*Banswara Electric Supply Co. v CIT*, (1986) 160 ITR 127 (Raj)].”.

Page 1540: section 41(1):

After line 6 from top, *add*,—

“In *Addl. CIT v Chandrakant D. Patel* [(1983) 139 ITR 233 (MP), special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 183], the refund of sales tax to the assessee-firm which succeeded to a sole proprietary concern was held taxable in the year in which such refund became due as a result of a Supreme Court judgment.

It may be noted that section 41(1) can be invoked to assess sales tax refund as a benefit to the assessee only in a case where the subject-matter of the refund relates to a payment of sales tax in an earlier year which has come out of the coffers of the assessee itself and not from out of any collections made by the assessee in that regard from its customers. In such a case, it can be truly said that the sales tax payment in an earlier year is a ‘trading liability incurred by the assessee’. Any deduction made in the relevant year in respect of that sales tax payment can be truly regarded as a deduction made in respect of a trading liability incurred by the assessee. And it can also be truly said that the subsequent refund of the sales tax can be regarded as a ‘benefit’ in respect of the trading liability by way of ‘remission of the trading liability’ [*CIT v Thirumalaiswamy Naidu & Sons*, (1984) 147 ITR 657, 667-8 (Mad)].

It cannot be laid down as a general proposition of law that unless sales tax paid by the assessee was refunded as sales tax and/or as a result of the proceedings under the relevant Sales Tax Act, the refund thereof cannot be brought within the net of tax under section 41(1) [*CIT v Sahney Steel & Press Works Ltd.*, (1985) 152 ITR 39 (AP)]. In that case, refund of sales tax was made in pursuance of an incentive scheme of the State Government. The same was held nevertheless to attract section 41(1).

In *CIT v Deora Pu Canbeon Mfg. Co. Pr. Ltd* [(1985) 156 ITR 831 (MP)], the Tribunal found that the amount of sales tax refunded was payable to the buyer. It was held that such refund does not attract section 41(1).”.

Page 1540: section 41(1):

At the end of the paragraph titled “*Mere challenge to levy not enough*”, *add*,—

“In *Rameshwar Prasad Kishan Gopal v ITO* [(1983) 141 ITR 763 (All)], the assessee challenged the levy of excise duty on poppy heads by filing a writ in the High Court. Certain amount was deposited in the court as per court’s order. The same was, later, directed to be refunded when the writ was allowed. There were two appeals in the Supreme Court against the allowance of the writ. The Income-tax Officer sought to tax the refunded amount. It was held that the decision of the High Court had not become final and was the subject-matter of appeals. There was thus no cessation of liability so as to attract section 41(1).”.

Page 1540: section 41(1):

At the end of the paragraph titled "*On refunds, the section did not introduce a new principle of law but was mere declaratory in character*", add,—
"The decision in *CAGIT v Kerala Estate* [(1974) 96 ITR 210 (Ker)], has been affirmed by the Supreme Court in *CAGIT v Kerala Estate Mooriad Chalapuram* [(1986) 161 ITR 155 (SC)], where it has been held that in the absence, in the Agricultural Act provision, of a deeming provision similar to section 10(2A) of the 1922 Act or section 41(1) of the 1961 Act, the remission could not be considered as amounting to receipt of agricultural income."

Page 1541: section 41(1):

After line 20 from top, add,—

"Applying the principle laid down by the Supreme Court in *CIT v Hukamchand Mohanlal* [(1971) 82 ITR 624 (SC)], it has been held that the successor-in-business could not be assessed in respect of deemed profit under section 41(1) in relation to allowance, etc., granted to the predecessor-in-business [see, *CIT v Minerals & Metals Trading Corporation of India Ltd.*, (1986) 157 ITR 371 (Del); *Girdharilal Bagadia v Addl. CIT*, (1986) 161 ITR 89 (MP)]. Also see, *CIT v Gunturu Kannabhai & Co.*, (1986) 158 ITR 353 (AP).

However, the above proposition of law does not hold good in cases of amalgamation of companies because in such a case, in the eye of law, the corporate personality of the amalgamating company is blended and continued in the amalgamated company [*CIT v Saraswati Industrial Syndicate Ltd.*, (1982) 136 ITR 366 (Punj); *Saraswati Industrial Syndicate Ltd. v CIT*, (1982) 136 ITR 361 (Punj)].

Similarly, a mere re-constitution of a firm does not bring about a change in the identity of the partnership. In that view of the matter, refund of sales tax was held taxable in the hands of the recipient reconstituted firm even though the sales tax liability was allowed deduction in the hands of the originally constituted firm [*CIT v Chandajee Khubajee & Co.*, (1983) 143 ITR 365 (AP)]."

Pages 1543-1544: section 41(1):

On the subject "*A time-bar on a liability does not by itself attract action under section 41(1)*", reference may also be made to *CIT v B. N. Elias & Co. Pr. Ltd.*, (1986) 160 ITR 45 (Cal); *CIT v Pre-stressed Concrete Co. (S.I.) Pr. Ltd.*, (1986) 162 ITR 314 (Mad).

Page 1544: section 41(1):

Before line 15 from bottom, add,—

"In consonance with the above view, unilateral transfer of an amount from sundry creditor's account to profit and loss account [*CIT v Bharat Nidhi Ltd.*, (1983) 143 ITR 47 (Del)] does not by itself attract liability under section 41(1). Also see, *CIT v Rex Commercial Corpn. P. Ltd.*,

(1984) Tax LR 727 (Bom); *CIT v Sadul Textiles Ltd.*, (1987) 167 ITR 634 (Raj); *CIT v Agarpara Co. Ltd.*, (1986) 158 ITR 78 (Cal).”.

Page 1546: section 41(1):

Before the paragraph titled “*Onus on the department*”, *add.*—

“**Question of law.**—The question whether a particular amount is assessable under section 41(1) is a question of law [*CIT v Balabux Birla & Co.*, (1986) 157 ITR 759 (Punj)].”.

Page 1546: sections 41(2) & (2A):

Before line 11 from bottom, *add.*—

“**Sections 41(2) and 41(2A) omitted.**—The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), has omitted subsections (2) and (2A) of section 41 with effect from 1st April, 1988, *i.e.*, for and from assessment year 1988-89. The discussion relating to balancing charge in respect of depreciable assets at pages 1546 to 1558 of Vol. 2 is applicable upto assessment year 1987-88.”.

Page 1548: section 41(2):

After line 19 from top, *add.*—

“**Sale of business as a going concern.**—In every case where a concern carrying on a business is sold as a whole, it cannot be assumed that the sale was for a slump price. Where the schedule attached to the agreement to sell listed the value of different items separately, it was held that a part of the consideration for the sale of the business as a going concern was referable to the depreciable asset and the profit under section 41(2) in relation to such asset was rightly assessed [*Chandra Katha Industries v CIT*, (1982) 138 ITR 168 (All)].”.

Page 1550: section 41(2):

At the end of serial No. 2, column 2, *add.*—“Also see, *Chandra Katha Industries v CIT*, (1982) 138 ITR 168 (All).”.

Page 1551: section 41(2):

At the end of serial No. 4, column 1, *add.*—“The Bombay High Court decision in *Bombay Burmah Trading Corporation Ltd. v CIT* [(1971) 81 ITR 777 (Bom)] has been affirmed in *CIT v Bombay Burmah Trading Corpn* [(1986) 161 ITR 386 (SC)].”.

Page 1551: section 41(2):

At the end of serial No. 5, column 2, *add.*—“[see, *Chandra Katha Industries v CIT*, (1982) 138 ITR 168 (All)].”.

Page 1551: section 41(2):

Before the paragraph titled “*Year of chargeability*”, *add.*—

“**Confiscation does not attract section 41(2).**—Section 41(2) is applicable

only where as a result of sale, discard, demolition or destruction of an asset, moneys payable in respect of such asset exceed its written down value. Confiscation of an asset does not fall within any of the stipulated happenings attracting section 41(2) [see, *CIT v Bengal Assam Steamship Co. Ltd.*, (1986) 161 ITR 576 (Cal)].”.

Pages 1551-1552: section 41(2):

At the end of the paragraphs titled “*Year for chargeability*”, add,—

“In *CIT v Rohtak Textile Mills Ltd* [(1982) 138 ITR 195 (Del)], special leave petition granted by the Supreme Court: (1984) 149 ITR (St.) 131], three of the electrical undertakings run by the assessee were taken over by the Electricity Board during the relevant previous year and a part of the price was also paid, but without finalising the price payable. It was held that profits under section 41(2) could not be taxed for the relevant assessment year because the moneys payable in respect of such take-over could not be said to have become due in the relevant previous year. Also see, *Okara Electric Supply Co. Ltd. v CIT*, (1985) 154 ITR 493 (Del); *CIT v United Provinces Electric Supply Co. Ltd.*, (1987) 166 ITR 565 (Cal).

In *CIT v Sheshappa Hegde* [(1984) 150 ITR 164 (Karn)], it has been held that the compensation under the Karnataka Carriages (Acquisition) Act, 1976, for take-over of the motor vehicle becomes due only after determination and quantification of the compensation under an award of the arbitrator appointed for the purpose.

Also see, *Nagpur Electric Light & Power Co. Ltd. v CIT*, (1987) 33 Taxman 14 (Bom).”.

Page 1553: section 41(2):

Before the paragraph titled “*Calculating balancing charge*”, add,—

“On the applicability or otherwise of section 41(2), reference may also be made to *Addl. CIT v Smt. Indira Bai*, (1985) 151 ITR 692 (AP).

In the facts of *CIT v Bengal Jute Mills Co. Ltd* [(1987) 165 ITR 63 (Cal)] and *CIT v Bengal Jute Mills Co. Ltd* [(1987) 165 ITR 646 (Cal)], the matters were remanded to the Tribunal for ascertainment of the written down value which were not available in the statement of the cases.

In *J. A. Trivedi Bros. v CIT* [(1984) 148 ITR 659 (MP)], the mines belonging to the assessee were compulsorily acquired along with the assets belonging to the contractor and lying in the mines, a third person. The Income-tax Officer computed section 41(2) profits on the basis of the entire compensation received. It was held that in such a case, the compensation had to be apportioned between the assessee and the contractor by the District Court and only thereafter section 41(2) profits could be ascertained in the hands of the assessee.

Replacement in specie of the damaged asset.—The expression ‘moneys payable’, as defined in the *Explanation* below section 41(4) read with section 32(1), includes any amount received from an insurance company. Where

the insurance company, by exercising its option to replace the damaged asset, replaces the damaged asset by a new asset in specie, there is no question of payment of any money by the insurance company so as to bring the case within the expression 'moneys payable' attracting section 41(2). In such a case, even the value of the replaced asset cannot be treated as 'moneys payable' [*Kasturi & Sons Ltd. v CIT*, (1985) 152 ITR 541 (Mad)].

Sale price in foreign currency.—Where the sale price, etc., is paid or payable, either in a lump or in instalments, in foreign currency, the moneys payable for the purpose of determination of deemed profits under section 41(2) are to be ascertained after converting the foreign currency into Indian rupee currency at the rate of exchange prevailing on the date of actual payment [*CIT v Bharat Lines Ltd.*, (1986) 159 ITR 541 (Bom)].

Depreciation not allowed in India.—The determination of deemed profit under section 41(2) depends on the figure of written down value of the concerned asset. Since depreciation not actually allowed in India cannot be taken into account in arriving at the written down value of the concerned asset, no question arises for assessing balancing charge under section 41(2) on sale of such asset [*CIT v East Asiatic Co. Ltd.*, (1984) 148 ITR 124 (Cal)]. Cf. *Ogar Sugar Works Ltd. v State of Karnataka*, (1985) 155 ITR 39 (Karn).".

Page 1553: section 41(2):

At the end of the paragraph titled "*Brokerage*", add,—

"However, in *CIT v Bharat Lines Ltd* [(1986) 159 ITR 541 (Bom)], the brokerage and travelling expenses were held directly referable to and related to the sale and, therefore, deductible in computing deemed profits under section 41(2).

Solatium.—For the purpose of calculation of balancing charge, the amount received as solatium forms part of the sale price of, or moneys payable for, the assets [*Nagpur Electric Light & Power Co. Ltd. v CIT*, (1987) 33 Taxman 14 (Bom), following, *Akola Electric Supply Co. P. Ltd. v CIT*, (1978) 113 ITR 265 (Bom)].".

Page 1553: section 41(2):

On the subject "*Depreciable and non-depreciable items sold for a composite price*", reference may also be made to *City Transport Pr. Ltd. v CIT*, (1986) 162 ITR 436 (Mad).

Page 1555: section 41(2):

In line 6 from top, after "126 ITR 403 (Punj)", add,—"; *Ambala Cantt. Electric Supply Corpn. Ltd. v CIT*, (1982) 133 ITR 343 (Punj); *Ambala Electric Supply Co. Ltd. v CIT*, (1983) 139 ITR 925 (Punj)".

Page 1555: section 41(2):

After serial No. (5), giving illustrative cases where the relevant transaction involved 'sale' resulting in balancing charge, add,—

“(6) Where the assets of a firm are sold before its dissolution by its partners to one of them [*Popular Engineering Co. v CIT*, (1983) 140 ITR 398 (MP)].

(7) Auction sale by the Collector for recovery of arrears of cane cess [*Jagdish Sugar Mills Ltd. v CIT*, (1986) 161 ITR 209 (SC), affirming *CIT v Jagdish Sugar Mills*, (1974) Tax LR 526 (All), which has been referred to in lines 23-24 from top of page 1555 of Vol. 2].

(8) Transfer of depreciable asset by the assessee-firm to a company, which allotted its shares to the partners of the assessee-firm in lieu of the sale price [*CIT v Amar Transport Services*, (1986) 162 ITR 1 (MP)].

Also see, *Cawasji & Co. v CIT*, SLP (Civil) No. 951 of 1984: (1984) 149 ITR (St.) 132 (SC).”.

Page 1556: section 41(2):

After serial No. (9), giving illustrative cases where the relevant, transaction did not involve sale and, therefore, not resulting in balancing charge, add,—

“(10) Allocation of depreciable asset to a retiring partner in satisfaction of his dues from the firm [*Addl. CIT v Agarwal Timber & Bans Co.*, (1983) 144 ITR 46 (MP)].

(11) An individual transferred his depreciable asset to a firm wherein he was a partner [*Smt. Laxmibai v CIT*, (1983) 144 ITR 82 (MP)].

(12) The assessee transferred his asset to a firm wherein he became a partner [*CIT v Vijendra Pal Singh*, (1987) 163 ITR 115 (Raj)].

(13) Handing over of the assets of the old firm by its partners to a new partnership wherein those partners were also partners [*CIT v Chironjilal Mahawar*, (1987) 63 CTR (MP) 139.”.

Page 1557: section 41(2):

After line 12 from top, add,—

“In *CIT v S. Balasubramanian* [(1986) 160 ITR 610 (Mad)], depreciation was granted in the hands of the bigger HUF. Such depreciable asset was assigned to a smaller HUF on partition. That asset was sold by the smaller HUF. It was held that section 41(2) was not attracted because the identity of the person obtaining depreciation was different from that selling the asset.”.

Page 1557: section 41(2):

Before the paragraph titled “*Failure to disclose attracts s. 147(a)*”, add,—

“**Onus.**—For invoking the provisions of section 41(2), the burden is on the revenue to show that depreciation was allowed in earlier year(s) in respect of the concerned asset [*CIT v Dr. Kishanchand*, (1983) 144 ITR 1 (MP)].”.

Pages 1557-1558: section 41(2):

On the subject “*Balancing charge in the hands of amalgamated company*”,

reference may also be made to *CIT v Delta Jute Mills Co. Ltd.*, (1986) 159 ITR 215 (Cal); *CIT v Delta Jute Mills Co. Ltd.*, (1986) 159 ITR 220 (Cal).

Page 1560: section 41(5):

At the end of the paragraph titled "*Legislative history*", *add*,—"Section 41(5) has further been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), by omitting the words, brackets, figures and letter 'sub-section (2), sub-section (2A),' from that section 41(5), with effect from 1st April, 1988. This amendment was consequential to the omission, by that Act, of sub-sections (2) and (2A) from section 41.

That section 41(5) has also been amended by the Finance Act, 1987 (11 of 1987), by omitting the words 'or under the head "Capital gains"' from that section 41(5), with effect from 1st April, 1988. This amendment is also of a consequential nature."

Page 1570: section 43(1):

At the end of paragraph titled "*Explanation 1*", *add*,—"This *Explanation 1* has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1988. The amendment is consequential to the adoption, by the said Act, of a new scheme for depreciation allowance."

Page 1570: section 43(1):

After the paragraph titled "*Explanation 2*", *add*,—

"By the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), a new *Explanation 2* has been substituted for the existing *Explanation 2*, with effect from 1st April, 1988. For the scope of the so-substituted *Explanation 2*, reference may be made to item (1) of paragraph 6.4 of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6066-6067, *ante*, in connection with section 32."

Pages 1570-1571: section 43(1):

After the paragraph titled "*Explanation 4*", *add*,—

"By the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), a new *Explanation 4* has been substituted for the existing *Explanation 4*, with effect from 1st April, 1988. Like its predecessor, the so-substituted *Explanation 4* makes provision for ascertainment of actual cost of any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, which is re-acquired by him. The actual cost of such an asset shall be—

- (i) the actual cost to him when he first acquired the asset as reduced by—

- (a) the amount of depreciation actually allowed to him under the 1922 Act and/or the 1961 Act upto and including the assessment year 1987-88; and
- (b) the amount of depreciation that would have been allowable to the assessee for and from assessment year 1988-89, as if the asset was the only asset in the relevant block of assets; or
- (ii) the actual price for which the asset is re-acquired by him, whichever is less."

Page 1571: section 43(1):

After the paragraph titled "*Explanation 7*", add,—

"*Explanation 8*.—A new *Explanation 8* has been inserted in section 43(1) by the Finance Act, 1986 (23 of 1986), with retrospective effect from 1st April, 1974, i.e., for and from assessment year 1974-75."

Pages 1573-1574: section 43(1):

On the subject "*Cost met by persons other than the assessee—actual cost to the assessee, what it is?*", reference may also be made to—

- (1) *Ambala Electric Supply Co. Ltd. v CIT*, (1983) 139 ITR 925 (Punj) [consumers' contributions to reduce the actual cost]. Also see, *CIT v Bombay Suburban Electric Supply Ltd.*, (1983) 142 ITR 298 (Bom), special leave petition granted by the Supreme Court: (1983) 140 ITR (St.) 23; *Ranchi Electric Supply Co. Ltd. v CIT*, (1984) 150 ITR 95 (Pat); *British Insulated Cables Ltd. v CIT*, (1983) 142 ITR 300 (Bom); *CIT v Panvel Taluka Electrical Development Co. Ltd.*, (1983) Taxation 71(1)-14 (Bom).
- (2) *Lucknow Producers' Co-operative Milk Union Ltd. v CIT*, (1983) 143 ITR 60 (All) [amount of grant received from the State Government is to reduce actual cost as the Government is an authority within the meaning of section 43(1)].

Page 1574: section 43(1):

On the subject "*Subsidy from the Government may reduce the actual cost*", reference may also be made to *CIT v Ravindra Tube Ltd.*, (1986) 162 ITR 235 (Del).

In *CIT v Godavari Plywoods Ltd* [(1987) 62 CTR (AP) 179], the subsidy was basically directed to encourage and induce the entrepreneurs to move to backward areas and establish industries there. Such subsidy was held not to reduce the amount of actual cost because the same was not granted for the specific purpose of meeting a portion of the cost of plant and machinery, etc. Also see, *CIT v Bhandari Capacitors (Pr.) Ltd.*, (1987) 34 Taxman 91 (MP).

Page 1575: section 43(1):

In line 8 from top, after "128 ITR 52 (Del)", add,—"; *CIT v Lonawalla Khandalla Electric Supply Co. Ltd.*, (1985) 22 Taxman 77 (Bom);

CIT v Calcutta Electric Supply Corporation Ltd., (1987) 166 ITR 797 (Cal) [taking the view that fresh ascertainment according to the 1961 Act definition is necessary].

Page 1575: section 43(1):

Before the paragraph "*What is includible in 'actual cost', add.—*

"What is not includible in 'actual cost'.—The new *Explanation 8* to section 43(1), which has been inserted by the Finance Act, 1986 (23 of 1986), with retrospective effect from 1st April, 1974, declares, for the removal of doubts, that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use is not to be included, and is to be deemed never to have been included, in the actual cost of such asset.

The scope and effect of the newly inserted *Explanation 8* have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(ix) *Modification in the definition of "Actual Cost" for the purposes of depreciation, investment allowance, etc.*—**18.1** Under the existing provisions of section 43(1) of the Income-tax Act, "actual cost" means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. It was found that certain taxpayers supported by some court decisions had resorted to a major change in accounting practice by capitalising the interest paid or payable in connection with acquisition of an asset relatable to the period after such asset is first put to use. This capitalisation implies inclusion of interest in the actual cost of the asset for the purposes of claiming depreciation, investment allowance, etc., under the Income-tax Act.

18.2 It is an accepted accounting principle that where an asset is acquired out of borrowed funds, the interest paid or payable on such funds constitutes the cost of borrowing and not the cost of the asset acquired with those funds. It is for this reason that as per the clear guidelines issued by the Institute of Chartered Accountants of India, the interest on moneys which are specifically borrowed for the purchase of a fixed asset may be capitalised only relating to the period prior to the asset coming into production, *i.e.*, relating to the erection stage of the asset. However, once the production starts, no interest on borrowings for the purchase of such assets should be capitalised. In spite of these clear guidelines, as also the consistent view of the Department in this matter, some tax-payers had adopted a contrary stance and had capitalised such interest. The first decision in favour of this stance had been rendered on May 13, 1974, in the case of *CIT v J. K. Cotton Spinning and Weaving Mills Ltd.*, [1975] 98 ITR 153. This decision as well as the subsequent decisions were contrary to the legislative intent. Hence, in order to enable the Government to collect the tax legitimately due to it for the earlier years, a clarificatory amendment to this

provision has been made retrospectively from 1st April, 1974 and will, accordingly, apply in relation to the assessment year 1974-75 and subsequent years.’.

The discussion under the paragraphs titled “*What is includible in ‘actual cost’*” has to be read subject to the provisions of the above *Explanation 8*.”.

Pages 1575-1576: section 43(1):

At the end of serial No. (1), giving illustrative cases where the interest, etc., was held to constitute part of ‘actual cost’, *add*,— “Also see, *CIT v Tata Hydro Electric Power Supply Co. Ltd.*, (1987) 63 CTR (Bom) 244.”.

Page 1577: section 43(1):

After serial No. (19), giving illustrative cases where the concerned amount was held to constitute part of ‘actual cost’, *add*,—

“(20) Cost of raw material purchased for trial run [*CIT v Food Specialities Ltd.*, (1982) 136 ITR 203 (Del)].

(21) Expenditure incurred on foreign tours of directors and officers for selection and purchase of machinery and plant for a new project [*Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 275 (Del); *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 280 (Del); *Addl. CIT v Delhi Cloth & General Mills Co. Ltd.*, (1983) 144 ITR 283 (Del)].

(22) Salaries, expenses of guest-house maintained for erection staff, travelling, vehicle and general expenses pertaining to the setting up of the plant [*CIT v Hindustan Polymers Ltd.*, (1985) 156 ITR 860 (Bom)].

(23) Interest on borrowings for purchase of plant and machinery [*K. Sampath Kumar v CIT*, (1986) 158 ITR 25 (Mad)]. Also see, *CIT v Oswal Spng. & Wvg. Mills Ltd.*, (1986) 160 ITR 426 (Punj).

(24) A portion of the amount paid to the foreign company for setting up plant and machinery, etc. [*CIT v Binny & Co.*, (1986) 159 ITR 303 (Mad)].

(25) Interest and expenses in connection with the A.I.D. loan [*CIT v Borosil Glass Works Ltd.*, (1986) 161 ITR 286 (Bom)].

(26) Foreign tour expenses incurred by officers for the purchase of the capital asset and for studying its working [*CIT v Belapur Co. Ltd.*, (1986) 161 ITR 516 (Bom)].

(27) Pre-commissioning expenses and expenses incurred for process know-how [*Periyar Chemicals Ltd. v CIT*, (1986) 162 ITR 163 (Ker)].

(28) Gross interest on borrowings for installation of plant and machinery was held to be added to actual cost even though interest was earned on term deposit made out of such borrowings [*CIT v Cap Steel Ltd.*, (1986) 162 ITR 533 (Karn)].

(29) Interest, tour expenses, bank charges, etc. [*CIT v Tata Chemicals Ltd.*, (1986) 162 ITR 556 (Bom)].

(30) Foreign tour expenses and interest [*CIT v Tata Chemicals Ltd.*, (1986) 162 ITR 662 (Bom)].

(31) A part of the value of the shares allotted in consideration of the technical know-how provided by the foreign collaborators in the form of drawings, designs, charts, etc. [*CIT v Protein Products Ltd.*, (1987) 167 ITR 157 (Ker)].

(32) Rent paid for the building taken on lease for housing the experts made available by the foreign collaborators during the erection of plant [*CIT v Protein Products Ltd.*, (1987) 167 ITR 157 (Ker)].

(33) Amount paid as premium or commercialisation charges to Government for obtaining permission to convert residential building into commercial building with extra space [*CIT v Hindustan Times Ltd.*, (1987) 63 CTR (Del) 84].

(34) Amount of sales tax paid on a filtration plant [*CIT v Vazir Sultan Tobacco Co. Ltd.*, (1987) Taxation 87(3)-85 (AP)].

Also see, *Sunil Syncheme Ltd. v CIT*, (1987) 163 ITR 467 (Raj); *CIT v Kores India Ltd.*, SLP (Civil) No. 1938 of 1980: (1983) 140 ITR (St.) 1 (SC).".

Page 1577: section 43(1):

Before line 5 from bottom, *add*,—"In the facts of the following cases, the concerned amount was held not to constitute part of 'actual cost':—

(1) *CIT v Inter Link Traders Pr. Ltd.*, (1983) 144 ITR 173 (Bom) [forfeited amount of the bond executed for the purpose of import of machinery following breach of the condition of the bond].

(2) *Kapur Sons & Co. v CIT*, (1986) 157 ITR 382 (Del) [ground rent, corporation tax and house tax].".

Page 1578: section 43(1):

After line 22 from top, *add*,—

"Actual cost of an asset in the hands of a reconstituted firm.—Where there is a change in the constitution of a firm, the reconstituted firm is not entitled to depreciation on the value of the asset on the basis of revaluation. The reconstituted firm is entitled to claim depreciation only on the written down value of the asset taken over by it from the erstwhile firm [*CIT v Alagappa Cotton Mills*, (1984) 149 ITR 640 (Mad)].".

Page 1579: section 43(1):

Before line 3 from bottom, *add*,—

"Explanation 1 to section 43(1) has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1988.".

Pages 1579-1580: section 43(1):

On the subject "Actual cost of assets acquired by gift or inheritance—Explanation 2", reference may also be made to *Simon Carves India Ltd. v CIT*, (1983) 141 ITR 712 (Cal); *Lucknow Producers' Co-operative Milk Union Ltd. v CIT*, (1983) 143 ITR 60 (All).

Page 1580: section 43(1):

Before line 3 from bottom (excluding the footnote portion), *add*,—

“*Explanation 2* to section 43(1) has been substituted by a new *Explanation 2* by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 1st April, 1988.”.

Page 1582: section 43(1):

After line 2 from top, *add*,—

“*Explanation 4* to section 43(1) has been substituted by a new *Explanation 4* by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 1st April, 1988.”.

Page 1592: section 43(5):

After serial No. (2), giving the illustrations of non-speculative cases, *add*,—

“(3) The assessee-firm, which was carrying on business, *inter alia*, in commission agency, entered into forward contracts on behalf of its constituents. The losses incurred by the constituents were not paid to the assessee. The assessee had to pay such losses and it debited the accounts of the respective constituents. Thereafter, the assessee filed suits for recovery of such debit balances. The civil court dismissed the suits on the ground that the claims based on wagering transactions were not enforceable in law. Then, the assessee wrote-off these debit balances and claimed deduction in respect thereof. It was held that the loss suffered by the assessee on account of such payments could not be said to be in the course of speculative business, but was a loss from commission agency business [*CIT v Shah Pratapchand Nowpaji*, (1983) 139 ITR 149 (AP)].

Also see, *CIT v Soorajmull Nagarmull*, (1981) 129 ITR 169 (Cal).”.

Page 1592: section 43(5):

At the end of the page, *add*,—

“(2) The assessee could not perform some of the contracts for supplying the oil due to want of wagons. These were settled by paying the price difference. The difference paid was held to be loss in speculation business [*CIT v Puttaiah Seshaiyah & Co.*, (1984) 146 ITR 168 (AP)].

(3) Delivery of goods could not be effected and the contracts were settled by payment. It was held to be of speculative nature [*CIT v Maya Ram Jia Lal*, (1986) 162 ITR 520 (Punj)].

(4) The assessee entered into contract with a buyer to supply cotton within stipulated time, with an option to the buyer to extend such time. The assessee failed to deliver goods even after extended time. Amount was paid to the buyer by way of loss for non-delivery of goods in full settlement of the contract. Transaction was held to be of speculative nature [*V. N. Sarsetty v CIT*, (1987) 163 ITR 727 (Karn)].

(5) A contract was settled prior to the date of delivery and the assessee paid difference between the price of the goods on the date of the contract

and that on the date of the settlement. It was held that the settlement of the contract fell within the ambit of 'speculative transaction' as defined in section 43(5) [*CIT v Dina Lal Gupta*, (1987) 33 Taxman 129 (Raj)].

Also see, *M.R. Dhawan v CIT*, (1984) 41 CTR (Del) 88; *Basanta Mal Tilak Ram v CIT*, (1985) 154 ITR 300 (Punj)."

Page 1594: section 43(5):

Before the paragraphs titled "*Other characteristics*", add,—

"Forward contracts for sale can be treated as hedging contracts and loss, if any, arising on such forward contracts can be set off against other income of the assessee only if such contracts are supported by a pre-existing contract for actual delivery of goods [*CIT v Ajit Spices: CIT v R. Vallabhadas & Sons*, (1987) 165 ITR 755, 758 (Ker)]."

Page 1595: section 43(5):

Before the paragraphs titled "*Departmental circular*", add,—

Illustrative cases.—In the facts of the following cases, the transactions were held to be hedging contracts within the meaning of clause (a) of the proviso to section 43(5):—

(1) *Addl. CIT v M.P. Sugar Mills (P.) Ltd.*, (1984) 148 ITR 203 (All) [forward transactions for sale of raw materials entered into by the assessee-manufacturer].

(2) *CIT v Hoare Miller & Co. Ltd.*, (1987) 166 ITR 341 (Cal) [local purchases contracts entered into to guard against future loss by price fluctuations].

Also see, *Addl. CIT v Rajasthan Charity Trust*, (1987) 165 ITR 759 (Raj).

On the other hand, in the facts of the following cases, the transactions were held not to be hedging contracts within the meaning of clause (a) of the proviso to section 43(5):—

(1) *M.G. Bros. v CIT*, (1985) 154 ITR 695 (AP) [forward transaction in neem oil and cotton seed oil by the assessee carrying on business in ground nut oil was held not a hedging contract because there was no evidence that the assessee had adequate stocks of raw materials to the extent of the forward transaction. Such a transaction was not covered by circular No. 23(XXXIV-4)D of 1960, dated 12-9-1960]."

Page 1597: section 43(5):

At the end of line 10 from top, add,— "Also see, *CIT v Ajit Spices: CIT v R. Vallabhadas & Sons*, (1987) 165 ITR 755 (Ker)" [holding that the circular issued under the 1922 Act is binding on the department to the extent such circular is not inconsistent with the 1961 Act provisions].

Pages 1598-1600: section 43(5):

At the end of the paragraphs titled "*Damages for breach of contract—whether speculative losses?*", add,—

"The above controversy on the point has been set at rest by the Supreme Court in *CIT v Shantilal P. Ltd.* [(1983) 144 ITR 57 (SC)], where it has been held that a transaction cannot be described as a 'speculative transaction' within the meaning of section 43(5), where there is a breach of contract and on a dispute between the parties damages are awarded as compensation by an arbitration award. The award of damages for the breach of contract is not the same thing as a party to the contract accepting satisfaction of the contract otherwise than in accordance with the original terms thereof. It may be that in general sense the layman would understand that the contract must be regarded as settled when damages are paid by way of compensation for its breach. What is really settled by award of such damages and their acceptance by the aggrieved party is the dispute between the parties. Section 43(5), however, speaks of a settlement of the contract, and a contract is settled when it is either performed or the promisee otherwise dispenses with or remits, wholly or in part, the performance of the promise made to him or accepts instead of it any satisfaction which he thinks fit. It is this sense of the law which must prevail in section 43(5). In so holding, their Lordships of the Supreme Court has approved the decisions in *CIT v Pioneer Trading Co. P. Ltd.* [(1968) 70 ITR 347 (Cal)] and *Bhandari Rajmal Kushalraj v CIT* [(1974) 96 ITR 401 (Mys)] and has overruled the view taken in *R. Chinnaswami Chettiar v CIT* [(1974) 96 ITR 353 (Mad)]. Also see, *CIT v Andhra Oil & Fertilisers Co.*, (1983) 143 ITR 661 (AP); *CIT v Bhagwan Dass Rameshwar Dayal*, (1984) 149 ITR 387 (Del); *CIT v Sri Venkateswara Rice & Oil Mills*, (1985) 154 ITR 756 (AP); *CIT v Rajasthan Wool Agencies*, (1986) 160 ITR 358 (Raj); *CIT v Maya Ram Jia Lal*, (1986) 162 ITR 520 (Punj); *CIT v Agarpara Co. Ltd.*, (1987) 167 ITR 866 (Cal); *CIT v Sohanlal Kunwar & Sons*, (1987) 164 ITR 129 (Raj)."

Page 1601: section 43(5):

After line 12 from top, *add*,—

"In the facts of *CIT v B. K. Birla* [(1986) 157 ITR 348 (Cal)], it has been held that the income from speculation business in the name of minor daughter of the assessee could not be included in the total income of the assessee."

Page 1602: section 43(6):

At the end of the paragraphs titled "*Subsequent amendments in the 1961 Act definition*", *add*,—

"The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), has amended section 43(6) as under:—

- (a) A new sub-clause (c) has been inserted after the proviso to section 43(6);
- (b) *Explanation 1* has been amended;

- (c) The existing *Explanations* 2 and 2A have been substituted by a new *Explanation* 2;
- (d) *Explanation* 4 has been inserted.

All these amendments are to take effect from 1st April, 1988, *i.e.*, for and from assessment year 1988-89.

For the scope and effect of these amendments, reference may be made to items (m) and (n) of paragraph 6.4 of the departmental circular No. 469, dated 23rd September, 1986, which have been reproduced at page 6066, *ante*, in connection with section 32.”.

Page 1602: section 43(6):

After the paragraph titled “*Written down value—importance of*”, add,—

“For and from assessment year 1988-89, the question of written down value assumes importance in connection with—

- (i) depreciation allowance [s. 32(1)(ii)]; and
- (ii) computation of capital gains in certain cases [s. 50].

Written down value to be ascertained in Indian currency.—The Income-tax Act contemplates a determination of every allowance and every item of income in terms of Indian currency. Therefore, the words ‘written down value’ and ‘the actual cost’ in section 43(6) contemplate cost of asset in Indian rupees and not in any other currency [*Calcutta Electric Supply Corpn. Ltd. v Addl. CIT*, (1982) 136 ITR 777 (Cal)]. The written down value of the depreciable assets should be determined on the basis of the rate of exchange with reference to the date of contract or the date of delivery or the date of payment [*CIT v Calcutta Electric Supply Corporation Ltd.*, (1987) 166 ITR 797 (Cal)].”.

Pages 1603-1604: section 43(6):

On the subject “*Depreciation actually allowed—meaning of, in section 43(6)(b)*”, reference may be made to *Indian Bank Ltd. v CIT*, (1985) 153 ITR 282 (Mad); *Hukumchand Mills Ltd. v CIT*, (1986) 160 ITR 661 (Bom); *CIT v Hukumchand Mills Ltd.*, (1986) 160 ITR 650 (Bom); *CIT v East Asiatic Co. Ltd.*, (1984) 148 ITR 124 (Cal); *CIT v Dr. Kishan-chand*, (1983) 144 ITR 1 (MP).

Pages 1608-1609: section 43(6):

At the end of the paragraphs titled “*Initial depreciation—whether to be included in ‘depreciation actually allowed’?*”, add,—

“As a result of the amendments of clauses (iv) and (v) of section 32(1) by the Finance Act, 1983, the amount of initial depreciation allowed under any of the said clauses has, for and from assessment year 1984-85, to be taken into account even for determining the written down value for the purpose of allowance of normal depreciation. No amendment has been made in clause (vi) of section 32(1) in that regard.

It may be noted that allowance of initial depreciation has been discontinued for and from assessment year 1988-89 as a result of the omission of clauses (iv), (v) and (vi) of section 32(1) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1988.”.

Page 1614: section 43A:

After line 21 from top, *add*,—

“As to the interpretation of section 43A, reference may also be made to—

- (1) *CIT v Coromandel Fertilisers Ltd.*, (1985) 156 ITR 283 (AP).
- (2) *Addl. CIT v Chowgule & Co. Pr. Ltd.*, (1986) 159 ITR 12 (Bom).
- (3) *CIT v Tata Hydro Electric Power Supply Co. Ltd.*: *CIT v Tata Power Co. Ltd.*: *CIT v Andhra Valley Power Supply Co. Ltd.*, (1986) 159 ITR 28 (Bom).
- (4) *Periyar Chemicals Ltd. v CIT*, (1986) 162 ITR 163 (Ker).
- (5) *CIT v South India Viscose Ltd.*, (1987) 163 ITR 674 (Mad).
- (6) *Modipon Ltd. v CIT*, SLP (Civil) No. 14403 of 1984: (1985) 152 ITR (St.) 192 (SC).

Also see, *South India Viscose Ltd. v CIT*, (1982) 135 ITR 206 (Mad).”.

Page 1614: new section 43B:

Before the text of section 44, *add*,—

“The new section 43B.—A new section 43B, relating to certain deductions to be only on actual payment, has been inserted by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984.

For the scope and effect of the newly inserted section 43B, reference may be made to paragraphs 35.1 to 35.5 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages lxxx-lxxxix of Vol. 4.

The said section 43B has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. For the scope and effect of such amendment, reference may be made to paragraphs 12.1 to 12.4 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6128 to 6129, *ante*.”.

Provisions not ultra vires.—The provisions of section 43B have been held not unconstitutional [*Mysore Kirloskar Ltd. v Union of India*, (1986) 160 ITR 50 (Karn)].

Provisions interpreted.—On a perusal of the language of section 43B, it is clear that it opens with a *non obstante* clause which means that it controls the operation of other provisions of the Act and irrespective of the other provisions, section 43B will have overriding effect. Keeping this in mind, if one examines the language of the section, it clearly brings out the intention of the Legislature that the deduction in respect of any tax or duty

under any law would be an allowable deduction in computing the income under section 28 of that previous year in which such sum is actually paid by the assessee. The intention is made more specific by providing that it would be so irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee. This clearly makes out that even if the mercantile method of accounting is employed and the liability to pay might have accrued which would give the assessee a right to obtain deduction, in view of the specific language of the section, the assessee would not be entitled to get deduction merely on accrual of the liability to pay the tax or duty, but would be so entitled to get deduction only on actual payment of tax or duty. The Legislature has also taken care by providing an *Explanation* that the assessee shall not be entitled to any deduction under section 43B of the Act in respect of such sum in computing the income of the previous year in which such sum is clearly paid by him in case a deduction in respect of any such sum was already allowed in an earlier previous year. It is, therefore, clear that the assessee shall not be entitled to get the benefit twice, *i.e.*, at the time when the liability arises and also at the time when the actual payment is made. In view of the specific language of the section that deduction of the amount as mentioned in clauses (a) and (b) of section 43B would be allowed in the previous year in which such sum is paid, there is no scope for any doubt that such sum can be allowed by way of deduction while computing the income in the previous year in which such sum is actually paid by the assessee [*Lakhanpal National Ltd. v ITO*, (1986) 162 ITR 240, 246-7 (Guj)].”.

Page 1616: section 44:

After serial No. 19, listing the cases dealing with mode of computation of profits and gains of insurance business, *add*,—

- “20. *CIT v Motor & General Insurance Co. Ltd.*, (1983) 140 ITR 451 (Mad).
21. *CIT v United India Fire & General Insurance Co. Ltd.*, (1983) 140 ITR 994 (Mad).
22. *Oriental Fire & General Insurance Co. Ltd. v CIT*, (1983) 143 ITR 378 (Bom).
23. *United India Fire & General Insurance Co. Ltd. v CIT*, (1983) 144 ITR 638 (Mad).
24. *Addl. CIT v Jupiter General Insurance Co. Ltd.*, (1984) 147 ITR 405 (Bom).
25. *CIT v National Insurance Co. Ltd.*, (1986) 159 ITR 314 (Cal).
26. *CIT v Madras Motor and General Insurance Co. Ltd.*, (1986) 159 ITR 601 (Mad).
27. *CIT v India Reinsurance Corporation*, (1983) 37 CTR (Bom) 10.
28. *CIT v South India Insurance Co. Ltd.*, SLP (Civil) Nos. 7052-53 of 1982: (1984) 150 ITR (St.) 78 (SC).

29. *CIT v New India Assurance Co. Ltd.*, SLP (Civil) No. 11376 of 1982: (1984) 150 ITR (St.) 81 (SC).
30. *CIT v United India Insurance Co. Ltd.*, (1987) 64 CTR (Mad) 293.”.

Page 1619: section 44AA: rule 6F:

Rule 6F has further been amended by the Income-tax (Fifth Amendment) Rules, 1983 [S.O. No. 152(E), dated 28-2-1983]. Rule 6F as so amended has been reproduced at pages 5451-5454 of Vol. 6.

Page 1625: new section 44AB:

Before the text of section 44B, *add*,—

“New section 44AB.—A new section 44AB, relating to compulsory audit of accounts of certain persons carrying on business or profession, has been inserted by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985, *i.e.*, for and from assessment year 1985-86. For the scope and effect of the originally inserted section 44AB, reference may be made to paragraphs 17.1 to 17.8 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages lxxxiii-lxxxiv of Vol. 4.

Section 44AB has subsequently been amended by the Finance Act, 1985 (32 of 1985), with effect from 1-4-1985. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Modification of the provisions relating to audit of accounts of certain persons carrying on business or profession.—22.1 Under the provisions of section 44AB inserted in the Income-tax Act by the Finance Act, 1984, every person carrying on business or profession is required to get his accounts audited by an “accountant” if his total sales, turnover or gross receipts in business or profession are in excess of certain limits. The proviso to the said section lays down that where such person is required by or under any other law to get his accounts audited by an “accountant”, it shall be sufficient compliance with the provisions of the said section if such person gets the accounts of such business or profession audited under such other law and obtains the report of the audit as required under such other law and a further report in the form prescribed under the said section. An “accountant” for the purposes of section 44AB means a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and includes in relation to any State any person who is entitled by virtue of section 226(2) of the Companies Act, 1956, to be appointed to act as an auditor of companies registered in that State.

22.2 As the accounts in certain cases may be required to be audited by or under any other law by an auditor who may not be an “accountant” within the meaning of the term as defined for the purposes of section 44AB, the Finance Act, 1985, has amended the existing provisions to

secure that, in a case where the accounts of an assessee are required to be audited by or under any other law, it will suffice if the assessee gets his accounts audited under such other law, even though the person auditing the accounts under that law may not be an "accountant" within the meaning of the term, as defined for the purposes of section 44AB, and obtains the report of the audit under such other law and a further report from the same person or from an "accountant" as defined for the purposes of the said section in the form prescribed under the said section.

22.3 This amendment takes effect from 1st April, 1985, *i.e.*, from the date the provisions of section 44AB came into force under the amendment made by the Finance Act, 1984.¹

Relevant rule and forms.—Rule 6G of the Income-tax Rules, 1962 [see page 5454 of Vol. 6] and Form No. 3CA, Form No. 3CB, Form No. 3CC, Form No. 3CD and Form No. 3CE appended to those Rules [see pages 5570 to 5578 of Vol. 6], are relevant to section 44AB.

Provisions not unconstitutional.—The provisions of section 44AB are not unconstitutional [*T. S. Nataraj v Union of India*, (1985) 155 ITR 81 (Karn); *Mohan Trading Co. v Union of India: Hari Shankar Shrivastava v Union of India*, (1985) 156 ITR 134 (MP); *Rajkot Engineering Association v Union of India*, (1986) 162 ITR 28 (Guj); *Abhay Kumar & Co. v Union of India*, (1987) 164 ITR 148 (Raj); *A. S. Sarma v Union of India*, (1987) Tax LR 1161 (AP)].

Departmental circulars.—The following departmental circulars are relevant to section 44AB:—

I. Arhatias/commission agents are not to be excluded from the provisions of section 44AB of the 1961 Act.—“I am directed to refer to your letter dated 21st July, 1984, on the above subject and to say that *arhatias*/commission agents cannot† be excluded from the provisions of section.

† However, the following view appears in the “*Guidance Note on Tax Audit under section 44AB of the Income-tax Act*” published by the Institute of Chartered Accountants of India, at page 6, para. 3.7, which appears to be correct:

“3.7 Questions may also arise as to whether the sales by a commission agent or by a person on consignment basis should form part of the sales/turnover of the commission agent and/or consignee, as the case may be. In such cases, it would be necessary to find out whether the property in the goods belongs to the commission agent or the consignee immediately before the transfer by him to third person. If the property in the goods continues to belong to the principal, the relevant sale price should not form part of the sales/turnover of the commission agent and/or the consignee, as the case may be. If, however, the property in the goods belongs to the commission agent and/or the consignee, as the case may be, the sale price received/receivable by him shall form part of his sales/turnover.”

44AB of the Income-tax Act, 1961.' [F. No. 201/3/85-IT (A-II), dated 15th January, 1985.]

II. 'Audit of accounts under section 44AB of the Income-tax Act, 1961—Penalty under section 271B for assessment year 1985-86—Regarding.—Section 44AB of the Income-tax Act, 1961, lays down that every person carrying on business, whose sales, turnover or gross receipts exceed rupees forty lakhs or carrying on a profession, whose gross receipts exceed rupees ten lakhs, shall get his accounts of such previous year audited before the specified date and obtain before that date the report of such audit in the prescribed form.

2. Under *Explanation (ii)* to this section, "specified date" means the date of the expiry of four months from the end of the previous year, or where there are more than one previous year, from the end of previous year which expired last before the commencement of the assessment year or 30th day of June of the assessment year, whichever is later.

3. Rule 6G of the Income-tax Rules, 1962, inserted by the Income-tax (Amendment) Rules, 1985, with effect from 1-4-1985, prescribes the manner and forms in which the audit report required under section 44AB is to be submitted. These rules were notified on 31-1-1985.

4. A number of representations have been received from assesseees and various trade associations expressing their difficulties in getting the accounts audited by the "specified date" this year. The matter has accordingly been considered by the Board. This being the first year of the operation of the section and considering that the relevant rule was notified only on 31-1-1985, the Board has decided that the penalty proceedings under section 271B of the Income-tax Act, 1961, for failure to comply with the provisions of section 44AB should not be initiated for the assessment year 1985-86, in cases, where—

- (i) the audit report prescribed under section 44AB read with rule 6G has been obtained by 30th September, 1985; and
- (ii) the self-assessment tax under section 140A of the Act has been paid within the normal period prescribed under section 139(1) of the Act for filing return of income.'

[Circular No. 422, dated 19th June, 1985.]

III. 'Section 44AB of the Income-tax Act, 1961—Applicability in the cases of commission agents, arathias, etc.—Clarification regarding.—Section 44AB of the Income-tax Act, 1961, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs. 40 lakhs in any previous year relevant to the assessment year commencing on 1-4-1985 or any subsequent assessment year.

2. The Board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects

sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sales/turnover of the agent for the purpose of section 44AB of the Income-tax Act, 1961.

3. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, *kachha arahtias* and *pacca arahtias* dealing in different commodities in different parts of the country. The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contract under consideration. Each transaction, therefore, requires to be examined with reference to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also as a principal.

4. The Board are advised that so far as *kachha arahtias* are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to *pacca arahtias*. A *pacca arahtia* is not, in the proper sense of the word, an agent or even *del credere* agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various court pronouncements, the following principles of distinction can be laid down between a *kachha arahtia* and a *pacca arahtia*:

- (i) A *kachha arahtia* acts only as an agent of his constituent and never acts as a principal. A *pacca arahtia*, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and, thus, he acts as a principal as regards his constituent;
- (ii) A *kachha arahtia* brings a privity contract between his constituent and the third party so that each becomes liable to the other. The *pacca arahtia*, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent;
- (iii) Though the *kachha arahtia* does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The *pacca arahtia*, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf;
- (iv) The remuneration of a *kachha arahtia* consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the *pacca arahtia*;
- (v) The *kachha arahtia* unlike the *pacca arahtia* does not have any dominion over the goods;
- (vi) The *kachha arahtia* has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a

pacca arahtia has a personal interest of his own when he enters into a transaction;

- (vii) In the event of any loss, the *kachha arahtia* is entitled to be indemnified by his principal as is not the case with *pacca arahtia*.

5. The above distinction between a *kachha arahtia* and *pacca arahtia* may also be relevant for determining the applicability of section 44AB in cases of other type of agents. In the case of agents whose position is similar to that of *kachha arahtia*, the turnover is only the commission and does not include the sales on behalf of the principals. In the case of agents of the type of *pacca arahtia*, on the other hand, the total sales/turnover of the business should be taken into consideration for determining the applicability of the provisions of section 44AB of the Income-tax Act.

6. These instructions, may please be brought to the notice of all officers under your charge.' [Circular No. 452, dated March 17, 1986.]

Page 1626: section 44B:

Before the paragraph titled "*Departmental circular*", add,—

"In view of the clear language of section 44B, while it is open to an assessee to claim adjustment of carried forward business loss of past years against its business income computed under that section, it is not open to the assessee to put carried forward unabsorbed depreciation in the same bracket as carried forward business loss and also seek such adjustment of the same *qua* business loss [*Universal Cargo Carriers Inc. v CIT*, (1987) 165 ITR 209 (Cal)].".

Page 1628: New sections 44BB and 44BBA:

Before the text of section 44C, add,—

"**New section 44BB.**—A new section 44BB, making special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils, has been inserted by the Finance Act, 1987 (11 of 1987), with retrospective effect from 1st April, 1983. The scope and effect of the new section 44BB have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'New provisions for computing taxable income from activities connected with exploration of mineral oils.—21.1 A number of complications are involved in the computation of taxable income of a taxpayer engaged in the business of providing services and facilities in connection with or supply of plant and machinery on hire, used or to be used in the exploration for and exploitation of mineral oils. With a view to simplifying the provisions the Finance Act, 1987, has inserted a new section 44BB which provides for the determining of the income of such taxpayers at 10% of the aggregate of certain amounts which have been specified. This amount will include the

amounts received or due to be received in India on account of such services or facilities or supply of plant and machinery.

21.2 The amendment will not apply to any income to which the provisions of section 42, 44D, 115A or 293A of the Income-tax Act apply.

21.3 This amendment will come into force retrospectively from 1st April, 1983, and will, accordingly, apply in relation to assessment year 1983-84 and subsequent years.'”.

New section 44BBA.—A new section 44BBA, making special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents, has been inserted by the Finance Act, 1987 (11 of 1987) with effect from 1st April, 1988. The scope and effect of the new section 44BBA have been elaborated in the following portion of departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Simplification in the computation of income in respect of foreign airlines.—

22.1 Presently, the income of a non-resident engaged in the business of operation of aircraft is computed after allowing deduction for certain expenses and statutory deductions. This involves complications in determining of the income accruing or arising in India to such a person.

22.2 With a view to simplify the existing provisions, the Finance Act, 1987, has inserted a new section 44BBA which provides that the income from such business shall be computed at a flat rate of 5% of the amount received or receivable by or on behalf of the taxpayer for carriage of persons, livestock, mail or goods from any place in India and the amount received or deemed to be received within India on account of such carriage from any place outside India.

22.3 The amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years.’”.

Page 1631: section 44C:

In line 7 from top, for the word ‘resident’, *read* ‘non-resident’.

Before the text of section 44D, *add*,—

“Clause (i) of the *Explanation* to section 44C has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The amendment is consequential to the substitution, by that Act, of a new section 74 in place of the existing section 74.

In *CIT v Saudi Arabian Airlines* [(1985) 155 ITR 65 (Bom)], it has been held that the application of section 44C is not warranted where the computation of the Indian income of a non-resident is made in accordance with the provisions contained in rule 10(ii) of the Income-tax Rules, 1962.”.

Page 1634: section 44D:

After the paragraph titled "*Legislative amendments*", *add*,—

"Section 44D has further been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st June, 1983. For the scope and effect of the amendments to section 44D, as also to section 115A, reference may be made to paragraphs 36.1 to 36.4 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at page lxxxv of Vol. 4."

Pages 1638-1639: section 45:

After the paragraphs titled "*Amendments to section 45*", *add*,—

"Section 45(1) has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. This amendment is consequential to the insertion, by that Act, of section 54G.

Section 45(2) has been newly inserted by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st April, 1985, *i.e.*, for and from assessment year 1985-86. For the import of section 45(2), reference may be made to pages lxxxvi-lxxxvii of Vol. 4. The scope and effect of section 45(2) have also been elaborated in the following portion of departmental circular No. 397, dated 16th October, 1984, as under:—

'Capital gains—section 45.—9.1 Under the existing provisions, profits or gains arising from the transfer of a capital asset effected in the previous year are taken to be the income of the previous year in which the transfer took place and are chargeable to income-tax under the head 'Capital gains'.

9.2 The Amending Act has inserted a new sub-section (2) in section 45 of the Income-tax Act to provide that the profits and gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him, shall be charged to tax under the head 'Capital gains' in the year in which such stock-in-trade is sold or otherwise transferred by him. The new sub-section further provides that, for the purposes of computing the capital gain in such cases, the fair market value of the capital asset on the date on which it was converted or treated as stock-in-trade shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

To illustrate:

Suppose the cost of the asset is Rs. 20,000. The asset is converted by the owner as stock-in-trade on 1-6-1984 and taken to his stock at the market value of Rs. 70,000. The asset is sold on 1-8-1985 for Rs. 80,000.

Capital gain of Rs. 50,000 (subject to admissible deductions) will be liable to tax in the assessment year 1986-87. The business profit of Rs. 10,000 arising on the sale of the asset will be liable to tax as part of the business income for the assessment year 1986-87. (The accounting year of the assessee has been taken to be the financial year).

9.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'

Sub-sections (3), (4) and (5) have been newly inserted in section 45 by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The scope and effect of these newly inserted sub-sections (3), (4) and (5) of section 45, as also of omission of section 47(ii) and of substitution of sub clause (b) of section 49(1)(iii), have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Capital gains on transfer of firms' assets to partners and vice versa and by way of compulsory acquisition.—24.1 One of the devices used by assesseees to evade tax on capital gains is to convert an asset held individually into an asset of the firm in which the individual is a partner. The decision of the Supreme Court in *Kurtikey V. Sarabhai v CIT* [156 ITR 509] has set at rest the controversy as to whether such a conversion amounts to transfer. The Court held that such conversion fell outside the scope of capital gain taxation. The rationale advanced by the Court is, that the consideration for the transfer of the personal asset is indeterminate, being the right which arises or accrues to the partner during the subsistence of the partnership to get his share of the profit from time to time and on dissolution of the partnership to get the value of his share from the net partnership assets.

24.2 With a view to blocking this escape route for avoiding capital gains tax, the Finance Act, 1987, has inserted a new sub-section (3) in section 45. The effect of this amendment is that profits and gains arising from the transfer of a capital asset by a partner to a firm shall be chargeable as the partner's income of the previous year in which the transfer took place. For purposes of computing the capital gains, the value of the asset recorded in the books of the firm on the date of the transfer shall be deemed to be the full value of the consideration received or accrued as a result of the transfer of the capital asset.

24.3 Conversion of partnership assets into individual assets on dissolution or otherwise also forms part of the same scheme of tax avoidance. Accordingly, the Finance Act, 1987, has inserted a new sub-section (4) in section 45 of the Income-tax Act, 1961. The effect is that profits or gains arising from the transfer of a capital asset by a firm to a partner on dissolution or otherwise shall be chargeable as the firm's income in the previous year in which the transfer took place and for the purposes of computation of capital gains the fair market value of the asset on the date of transfer shall be deemed to be the full value of the consideration received or accrued as a result of the transfer.

24.4 As a consequential measure, clause (ii) of section 47 has been omitted and sub-clause (b) of clause (iii) of section 49(1) has been amended.

24.5 Under the existing provisions where capital gains accrue or arise by way of compulsory acquisition of assets, the additional compensation is taken into consideration for determining the capital gain for the year in which the transfer took place. To provide for rectification of assessment of the year in which capital gain was originally assessed, section 155(7A) was introduced. The additional compensation is awarded in several stages by different appellate authorities and necessitates rectification of the original assessment at each stage. This causes great difficulty in carrying out the required rectification and in effecting the recovery of additional demand. Another difficulty which arises is in cases where the original transferor dies and the additional compensation is received by his legal heirs. In the latter type of cases, proceedings have to be initiated against the legal heirs. Repeated rectification of assessments on account of enhancement of compensation by different courts often results in mistakes of computation of tax.

24.6 With a view to removing these difficulties the Finance Act, 1987, has inserted a new sub-section (5) in section 45 to provide for taxation of additional compensation in the year of receipt instead of in the year of transfer of the capital asset. The additional compensation will be deemed to be income in the hands of the recipient even if the actual recipient happens to be a person different from the original transferor by reason of death, etc. For this purpose, the cost of acquisition in the hands of the receiver of the additional compensation will be deemed to be *nil*. The compensation awarded in the first instance would continue to be chargeable as income under the head "Capital gains" in the previous year in which the transfer took place.

24.7 These amendments will come into force with effect from 1st April, 1988, and will, accordingly, apply from assessment year 1988-89 and subsequent years.'."

Page 1640: section 45:

For lines 4, 3 and 2 from bottom, read, "Tax on capital gains arising from agricultural lands—constitutionality.—See, "Vires of section 2(14) (iii), at page 70 of Vol. 1 and addition thereto."

Page 1640: section 45/2(47):

At the end of the page, add,—

"For the levy of tax on capital gains in relation to an asset, it is *sine qua non* that the concerned asset must be a 'capital asset' as defined in section 2(14) on the date of its transfer. In that view of the matter, if the concerned asset does not fall within the definition of 'capital asset' on the date of its transfer, no capital gain can be levied in such a case [*CIT v Jitendra Ramniklal*, (1986) 162 ITR 371 (Guj); *CIT v Smt. Mamta*]

Narottamdas, (1986) 162 ITR 365 (Guj). Also see, *CIT v Alanickal Co. Ltd.*, (1986) 158 ITR 630 (Ker)].”.

Page 1641: section 45/2(47):

At the beginning of the page, *add*,—

“Strict construction needed.—Capital gain is an artificial income created by the relevant provisions of the Income-tax Act. Therefore, these provisions should be strictly construed. In case of doubt, the assessee would be entitled to the benefit of doubt [*CIT v Bhupender Singh Atwal*, (1983) 140 ITR 928, 936 (Cal)].”.

Page 1642: section 45/2(47):

After line 22 from top, *add*,—

“Section 2(47) has been substituted by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st April, 1985. The scope and effect of the substituted section 2(47) have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

“*“Transfer” to include conversion into or treatment as a trading asset—*section 2(47).—2.1 Under section 2(47) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), the term “transfer” in relation to a capital asset, has been defined to include the sale, exchange or relinquishment of the asset; or the extinguishment of any rights therein; or the compulsory acquisition of the asset under any law.

2.2 Under the existing provisions, an assessee who converts a capital asset owned by him into a trading asset of his business and then sells the converted asset is able to avoid payment of tax on the capital gains represented by the appreciation in the value of the asset up to the date of its conversion. This is because the assessee can claim that the mere conversion of a capital asset into a trading asset does not amount to a transfer. The assessee can also claim that for the purposes of determining his business profits from the sale of the converted asset, the cost of such asset should be taken as its market value on the date of its conversion into a trading asset, and not its actual cost of acquisition to him. Hence, when the converted capital asset is sold by him as stock-in-trade, only the difference between sale price and market value of the stock-in-trade on the date of the conversion of the capital asset can be regarded as profit accruing to the assessee from the transaction.

2.3 With a view to preventing the avoidance of tax on such capital gains through the device of converting a capital asset into a trading asset, the Amending Act has substituted the definition of “transfer” in section 2(47) of the Act by a new definition to provide that, in a case where a capital asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment shall also be regarded as a transfer of the asset.

2.4 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’.

That section 2(47) has also been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, by inserting new sub-clauses (v) and (vi) and a new *Explanation*. The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Definition of “transfer” widened to include certain transactions.—11.1 The existing definition of the word “transfer” in section 2(47) does not include transfer of certain rights accruing to a purchaser, by way of becoming a member of or acquiring shares in a co-operative society, company, or association of persons or by way of any agreement or any arrangement whereby such person acquires any right in any building which is either being constructed or which is to be constructed. Transactions of the nature referred to above are not required to be registered under the Registration Act, 1908. Such arrangements confer the privileges of ownership without transfer of title in the building and are a common mode of acquiring flats particularly in multi-storeyed constructions in big cities. The definition also does not cover cases where possession is allowed to be taken or retained in part performance of a contract, of the nature referred to in section 53A of the Transfer of Property Act, 1882. New sub-clauses (v) and (vi) have been inserted in section 2(47) to prevent avoidance of capital gains liability by recourse to transfer of rights in the manner referred to above.

11.2 The newly inserted sub-clause (vi) of section 2(47) has brought into the ambit of “transfer”, the practice of enjoyment of property rights through what is commonly known as Power of Attorney arrangements. The practice in such cases is adopted normally where transfer of ownership is legally not permitted. A person holding the power of attorney is authorised the powers of owner, including that of making construction. The legal ownership in such cases continues to be with the transferor.

11.3 These amendments shall come into force with effect from 1-4-1988 and will accordingly apply to the assessment year 1988-89 and subsequent years.’.

Page 1643: section 45/2(47):

Lines 3 and 4 from top: The decision in *CIT v Jagdish Sugar Mills* [(1974) Tax LR 526 (All)] has been affirmed in *Jagdish Sugar Mills Ltd. v CIT* [(1986) 161 ITR 209 (SC)], holding that ‘sale’ includes an auction sale.

Page 1643: section 45/2(47):

At the end of the paragraph titled “*Exchange*”, add,—

“The ‘exchange’, in the context of the definition of the expression ‘transfer’ in section 2(47), must mean transfer of one capital asset for

another capital asset. Like a sale, the exchange requires two persons. There cannot be a sale to oneself. So too in the case of exchange. In this view of the matter, mere conversion by an assessee of one currency into another currency cannot be considered as 'exchange' so as to attract section 45 read with section 2(47) [*Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 787, 790 (Karn)].”.

Page 1643: section 45/2(47):

At the end of the paragraphs titled “*Relinquishment*”, add,—

“In *CIT v Smt. Vimla Lal* [(1983) 143 ITR 16 (All)], special leave petition dismissed by the Supreme Court: (1985) 151 ITR (St.) 11], one of the co-legatees relinquished his share. It was held that there was a transfer by the co-legatee within the meaning of section 2(47).”.

Pages 1643-1644: section 45/2(47):

After the paragraph titled “*Extinguishment of rights*”, add,—

“The word ‘transfer’ spoken of in respect of ‘extinguishment of any rights therein’ clearly includes a case where there is extinguishment of the capital asset itself. A right in any property could be extinguished even when the property ceases to exist. It cannot be doubted that the right is also extinguished in a capital asset when it ceases to exist. In that view of the matter, where an assessee receives money from an insurance company as compensation for the extinguishment of his capital asset, he receives that money in lieu of the capital asset and not in lieu of the premia paid to the insurance company. This amounts to a ‘transfer’ within the meaning of section 45 read with section 2(47) and the same may result in capital gains [*CIT v J.K. Cotton Spng. & Wvg. Mills Co. Ltd.*, (1987) 164 ITR 18 (All)].”.

Page 1644: section 45/2(47):

At the end of line 9 of the paragraph titled “*Retirement of a partner, whether results in an extinguishment?*”, add,— “This Bombay view has been followed in *N.A. Mody v CIT* [(1986) 162 ITR 420 (Bom)].”.

Page 1644: section 45/2(47):

After line 17 of the paragraph titled “*Retirement of a partner, whether results in an extinguishment?*”, add,—

“The view similar to that in *CIT v Mohanbhai Pamabhai* [(1973) 91 ITR 393 (Guj)] has also been taken in *CIT v L. Raghu Kumar* [(1983) 141 ITR 674 (AP)]; *CIT v N. Palaniappa Gounder* [(1983) 143 ITR 343 (Mad)]; *CIT v G. D. Naidu* [(1987) 165 ITR 63, 77 (Mad)]; *CIT v P. H. Patel* [(1987) 34 Taxman 479 (AP)].

•Appeals against *Mohanbhai Pamabhai's* case [91 ITR 393 (Guj)] have been dismissed by the Supreme Court in *Addl. CIT v Mohanbhai Pamabhai* [(1987) 165 ITR 166 (SC)] having regard to the view taken by that

court in *Sunil Siddharthbhai v CIT: Kartikeya V. Sarabhai v CIT* [(1985) 156 ITR 509 (SC)].”.

Page 1645: section 45/2(47):

At the end of the paragraph titled “*Partner bringing in capital assets to his firm by way of capital—results in a transfer*”, add,—

“The Gujarat High Court decision in *CIT v Kartikey V. Sarabhai* [(1981) 131 ITR 42 (Guj)], was taken in appeal to the Supreme Court in *Sunil Siddharthbhai v CIT: Kartikeya V. Sarabhai v CIT* [(1985) 156 ITR 509 (SC)]. There it was held that where a partner makes over his assets to his firm as his capital contribution, there is a transfer of the concerned asset by the partner to the firm because an exclusive interest of the partner in the concerned asset is reduced, on its entry into the firm, into a share interest. In so holding, the Supreme Court has affirmed the view taken by the Gujarat High Court.

At the same time, the Supreme Court in that case held that normally in such circumstances, the partner does not receive any consideration within the meaning of section 48 nor does any profit or gain accrue to him for the purpose of capital gains tax levy under section 45. Of course, if the partner concerned had made the transfer merely a device or ruse for converting the asset into money, the Income-tax Officer is entitled to penetrate the veil covering it and ascertain the truth. In so holding, the Supreme Court has reversed the view taken by the Gujarat High Court to the effect that the transfer, in the facts of that case, did result in capital gains.

The *Sunil Siddharthbhai's* case [(1985) 156 ITR 509 (SC)] has been followed in *CIT v Smt. Mamta Narottamdas* [(1986) 162 ITR 365 (Guj)]; *CIT v Smt. C. Anasuya Devi* [(1987) Tax LR 725 (AP)]; *CIT v Jahangir B. Jeejeebhoy* [(1987) Taxation 85(3)-298 (Bom)]; *CIT v Smt. Minal Rameshchandra* [(1987) 167 ITR 507, 517 (Guj)]; *CIT v Harikishan Jethalal Patel* [(1987) 65 CTR (Guj) 54].

In *CIT v Leena A. Sarabhai* [(1987) Taxation 87(3)-62 (Guj)], the matter was remanded to the Tribunal to consider the question whether the transfer [involved in a transaction of bringing shares by way of capital contribution in a firm] was with or without consideration.

Also see, *CIT v H. Rajan & H. Kannan*, (1984) 149 ITR 545 (Mad), special leave petition granted by the Supreme Court: (1983) 141 ITR (St.) 50 (SC); *CIT v B. Nagi Reddy*, SLP (Civil) No. 8085 of 1981: (1983) 144 ITR (St.) 51 (SC).

In view of the Supreme Court ruling in *Sunil Siddharthbhai's* case [(1985) 156 ITR 509 (SC)], the decision in *CIT v Smt. Dhirajben R. Amin* [(1983) 141 ITR 875 (Guj)]; *CIT v Ramanbhai B. Amin* [(1987) 163 ITR 125 (Guj)] are no more good law to the extent they held that a partner bringing a capital asset as contribution to his capital is exigible to capital gains tax levy.

It may be noted that the newly inserted section 45(3) by the Finance Act, 1987, with effect from 1st April, 1988, has statutorily superseded the

second limb of the Supreme Court ruling in *Sunil Siddharthbhai's* case [(1985) 156 ITR 509 (SC)]. Under that new provision, the amount recorded in the books of account of the firm as the value of the capital asset brought in by the partner is deemed, for the purposes of section 48, to be the full value of consideration received or accruing as a result of the transfer of the capital asset.”.

Page 1645: section 45/2(47):

At the end of the paragraph titled “Pay back to shareholders on reduction of company's share capital”, add,—

“The contrary view of the Gujarat High Court in *Kartikey V. Sarabhai v CIT* [(1982) Taxation 64(3)-176 (Guj) = 138 ITR 425 (Guj)], has also found favour in—

- (1) *Anarkali Sarabhai v CIT*, (1982) 138 ITR 437 (Guj) [redemption of preference shares by a company involves ‘extinguishment of rights’ in shares and thus amounts to ‘transfer’].
- (2) *Seth Gwaldas Mathuradas Mohata Trust v CIT*, (1987) 165 ITR 620 (Bom) [redemption of preference shares held by the assessee—transaction amounted to purchase by the company and sale as also extinguishment of rights and relinquishment of assets by the assessee—hence ‘transfer’ attracting capital gains tax levy].

Also see, *CIT v Goel Investment P. Ltd.*, SLP (Civil) No. 2466 of 1982: (1984) 149 ITR (St.) 90 (SC).”.

Page 1646: section 45/2(47):

On the subject “Transfer of a business as a whole”, reference may also be made to *CIT v Chandan and Bharat Enterprises*, (1985) 151 ITR 441 (Bom); *Syndicate Bank Ltd. v Addl. CIT*, (1985) 155 ITR 681 (Karn); *CIT v Official Liquidator*, (1985) 151 ITR 781 (Mad).

In *Dasaprakash Bottling Co. v CIT* [(1986) 159 ITR 690 (Mad)], the assessee sold business as a going concern for Rs. 8,67,505. The Tribunal estimated a sum of Rs. 2,00,000 as attributable to the goodwill and directed exemption in respect therefor. Further, the Tribunal held that the balance of Rs. 6,67,505 was to be apportioned between gains attributable to long-term capital assets and short-term capital assets and was assessable as capital gains. The Tribunal's decision was upheld.

In the facts of *Nagpur Electric Light & Power Co. Ltd. v CIT* [(1987) 33 Taxman 14 (Bom)], it has been held that there was no transfer of the business of the assessee as a going concern.”.

Page 1647: section 45:

After the paragraph titled “Departmental circular”, add,—

“Transfer of a part of a capital asset may give rise to capital gains.—The words ‘the transfer of a capital asset’ in section 45(1) cannot be interpreted as a transfer of the entire capital asset and not a part of the

same. The words 'a capital asset' mean the whole of that capital asset when so transferred or a part of that capital asset [*National Products v CIT*, (1987) 163 ITR 632 (Karn)].".

Page 1649: section 45:

At the end of serial No. (7), *add*,—"To the similar effect is the decision in *Nila Products Ltd. v CIT*, (1984) 148 ITR 99 (Bom).".

Page 1650: section 45:

In line 6, for "(1981) 120 ITR 352 (Cal)", *read* "(1981) 129 ITR 352 (Cal)".

Page 1650: section 45:

At the end of the page, *add*,—

"In the facts of the following cases, the resultant profit was held exigible to capital gains tax levy:—

(1) *C. G. Thimmaiah v CIT*, (1984) 148 ITR 741 (Karn) [an isolated sale of logs from rosewood trees grown on assessee's land obtained after cutting, dressing and sizing into logs].

(2) *CIT v India Co. Pr. Ltd.*, (1984) 149 ITR 548 (Mad) [transfer, not at book value but at market value, of shares of investment portfolio held by the assessee-company to its shareholders in order to discharge its liability arising on reduction of its share capital—surplus credited to reserve account on revaluation at market value of the transferred shares, held liable to capital gain tax levy].

(3) *CIT v M. Ramaiah Reddy*, (1986) 158 ITR 611 (Karn) [compulsory acquisition after 1-4-1970 of agricultural land with trees thereon—excess over cost—held exigible to capital gains tax levy].

(4) *Kalpaka Oil Mills v CIT*, (1986) 160 ITR 604 (Ker) [gains arising on the acquisition of a land, which was found to be not agricultural, were held assessable as capital gains].

On the other hand, in the facts of the following cases, it was held that the resultant profit/amount was not exigible to capital gains tax levy:—

(1) *CIT v J. Dalmia*, (1984) 149 ITR 215 (Del) [damages awarded by an arbitrator appointed in a suit for specific performance, since right to damages being a mere right to sue could not be transferred under the ban of section 6(e) of the Transfer of Property Act, 1882]. Also see, *Baroda Cements & Chemicals Ltd. v CIT*, (1986) 158 ITR 636 (Guj).

(2) *CIT v Alanickal Co. Ltd.*, (1986) 158 ITR 630 (Ker) [assessee sold rubber estate in a rural area—it was held that the transaction of sale of the rubber estate with rubber trees standing on it could not be bifurcated as sale of agricultural land and sell of trees so as to tax the gains arising on the sale of trees as capital gains under section 45 because in such a case the trees formed an integral part of agricultural land and did not constitute a capital asset].

(3) *CIT v Chunilal M. Pandya*, (1986) 158 ITR 505 (Guj) [amount standing to the debit of the assessee, in the firm's books at the time of his retirement from the firm, was foregone by the firm—section 45 held not attracted in respect of the amount so foregone].

(4) *CIT v Ashoka Marketing Ltd.*, (1987) 164 ITR 664 (Cal) [damages received by the assessee-purchaser for failure of the vendor to complete transaction of sale of property—since there was no element of cost involved in the receipt of damages, there was no liability to capital gains tax levy].

(5) *CIT v B. Harnam Singh & Sons*, (1985) 46 CTR (Del) 8 [amount received on transfer of the tenancy rights of the premises wherein the assessee-firm carried on its business was held not taxable in the hands of the assessee-firm because the tenancy rights did not belong to the assessee-firm].

(6) *CIT v Barium Chemicals*, (1987) 168 ITR 164 (AP) [damages paid to the assessee by a foreign company for failure to fulfil the obligations under an agreement—section 45 held not attracted as there was no transfer of any capital asset as envisaged under that section].

(7) *CIT v Jitendra Singh*, (1987) 34 Taxman 159 (Raj) [surplus received from the sale of jagir bonds was held exigible to capital gains tax levy].

Also see, *CIT v Malayalam Plantations Ltd.*, (1987) 168 ITR 63 (Ker)."

Page 1652: section 45:

After serial No. (5), giving illustrative cases whether the concerned amount was held to be loss under the head 'Capital gains' or not, *add*,—

"(6) Assessee constructed a small approach bridge. The same was washed away due to floods. The assessee claimed the loss as a short-term capital loss. The claim was negatived as there was no monetary consideration received by the assessee for the extinguishment of the asset [*Gujarat Mineral Development Corporation Ltd. v CIT*, (1983) 143 ITR 822 (Guj)]."

Page 1652: section 45:

In the last line of the paragraph titled "*Transfer of capital assets which had no cost of acquisition to the assessee, no capital gain result*", after "106 ITR 954 (Mad)", *add*,—" ; *CIT v H.H. Maharaja Sahib Shri Lokendra Singhji*, (1986) 162 ITR 93 (MP); *CIT v Ashoka Marketing Ltd.*, (1987) 164 ITR 664 (Cal); *CIT v National Electric Co.*, (1984) Taxation 75(1)-33 (Bom)".

Page 1652: section 45:

In line 3 from bottom, after "126 ITR 399 (Bom)", *add*,—" ; *CIT v Modiram Laxmandas (P.) Ltd.*, (1983) 142 ITR 702 (Bom); *CIT v Nelson & Co.*, (1985) 156 ITR 177 (Mad); *CIT v Ram Saran Chopra*, (1986) 158 ITR 1 (Pat); *CIT v Umedmal Bhandari*, (1982) 31 CTR (Mad) 44; *CIT v Rajani Motors*, (1984) 42 CTR (Pat) 337; *CIT v New Swadeshi*

Dyeing, Bleaching & Printing Mills, (1986) 50 CTR (Bom) 212; *CIT v Mysore Premier Metal Factory*, (1987) 61 CTR (Mad) 236" [holding that no capital gains tax is chargeable in respect of transfer of self-generated goodwill].

Page 1653: section 45:

In line 17 from top, after "106 ITR 954 (Mad)", *add*,— " ; *CIT v Modiram Laxmandass (P.) Ltd.*, (1983) 142 ITR 702 (Bom); *CIT v Satya Paul*, (1984) 148 ITR 21 (Cal)" [holding that no capital gains tax is chargeable in respect of transfer of quota rights, import licences, import entitlements, etc.].

Page 1653: section 45:

After serial No. 4, *add*,—

- "5. Tenancy right for the acquisition of which the assessee did not pay anything [*Bawa Shiv Charan Singh v CIT*, (1984) 149 ITR 29 (Del)]. Also see, *CIT v Markapakula Agamma*, (1987) 165 ITR 386 (AP).
6. Calves by the assessee running a dairy farm [*Sri Krishna Dairy & Agricultural Farm v CIT*, (1987) 65 CTR (AP) 44].

Legislative supersession for and from assessment year 1988-89.—It may be noted that the proposition of law laid down by the Supreme Court to the effect that in case of a transfer of a capital asset which had no cost of acquisition to the assessee, no capital gain results, has statutorily been superseded in so far as transfer of self-generated goodwill is concerned. This has been done by making specific provision for 'cost of acquisition' even in relation to self-generated goodwill of a business through an amendment of section 55(2) by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988."

Page 1653: section 45:

Before the paragraph titled "*Year of assessment*", *add*,—

"**Previous year for capital gains.**—See pages 168-169 of Vol. 1 and additions thereto."

Page 1654: section 45:

In line 3 from top, after "53 ITR 747 (Mad)", *add*,— " ; *M. Venkatesan v CIT*, (1983) 144 ITR 886 (Mad); *B. N. Vyas v CIT*, (1986) 159 ITR 141 (Guj)" [holding that the concerned asset must be a 'capital asset' on the date of transfer even though it was not a 'capital asset' on the date of its acquisition].

Page 1654: section 45:

After line 6 from top, *add*,—

"The capital gains arising from transfer of a capital asset is chargeable

to tax during the previous year in which the transfer took place even though the consideration was not ascertained and was in dispute [*CIT v Rohtak Textile Mills Ltd.*, (1982) 138 ITR 195 (Del), special leave petition granted by the Supreme Court: (1984) 149 ITR (St.) 131 (SC)]. Also see, *Smt. Jeejeebai Shinde v CIT*, (1983) 144 ITR 693 (MP), special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 50 (SC).”.

Page 1654: section 45:

Before line 10 from bottom, *add*,—

“It may be noted that any transaction involving allowing the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), has been included within the definition of the expression ‘transfer’, in relation to a capital asset, as a result of insertion of sub-clause (v) in section 2(47), by the Finance Act, 1987, with effect from 1st April, 1988.”.

Pages 1654-1655: section 45:

On the subject “*Transfer, when takes place?*”, reference may also be made to—

- (1) *Evans Fraser & Co. Ltd. v CIT*, (1982) 137 ITR 493 (Bom) [transfer of the assets of a private company to a new public company was held to have taken place after the public company came into existence and its board of directors approved the agreement of sale].
- (2) *Arundhati Balkrishna v CIT: Balkrishna Harivallabhdas v CIT*, (1982) 138 ITR 245 (Guj) [where the transfer is effected by a registered deed, the effective date of transfer was held to be the date on which the sale deed was signed and not when it was registered].
- (3) *CIT v A. V. Bhanoji Rao*, (1983) 142 ITR 706 (AP) [no document, registered or otherwise, is needed for transferring even an immovable property to a firm by a partner as capital contribution]. But see, *CIT v T.M.B. Mohamed Abdul Khader*, (1987) 166 ITR 207 (Mad).
- (4) *CIT v Dadha & Co.*, (1983) 142 ITR 792 (Mad) [transfer of an immovable property by a firm even to a partner can be effected only by a registered conveyance and not by mere book entry]. Also see, *Abdul Kareemia & Bros. v CIT*, (1984) 145 ITR 442 (AP); *CIT v Palaniappa Enterprises*, (1984) 150 ITR 237 (Mad); *Jansons v CIT*, (1985) 154 ITR 432 (Karn).
- (5) *Jagdish Sugar Mills Ltd. v CIT*, (1986) 161 ITR 209 (SC) [in case of a court auction sale, the transfer takes effect on the date on which the sale certificate was issued].

- (6) *Nawab Sir Mir Osman Ali Khan v CWT*, (1986) 162 ITR 888 (SC) [legal ownership in an immovable property of a value of Rs. 100 or more can be transferred only by executing and registering a sale deed].
- (7) *Nagpur Electric Light and Power Co. Ltd. v CIT*, (1987) 33 Taxman 14 (Bom) [capital gains from transfer of movable assets were held taxable in the year in which delivery of possession of such assets was effected].

Page 1655: section 45:

At the end of line 13 from top, *add*,—“However, the other view is that where, as between the transferor and the transferee, all the formalities have been gone through, such as the execution of a document of transfer and the physical handing over the shares by transferor to the transferee, the shares should have been taken to have been transferred to the transferee, though until the transfer of shares is registered in the company's books in accordance with the Company Law, the transfer could not enable the transferee to exercise rights of a shareholder *vis-a-vis* the company [*Vasudev Ramchandra Shelat v Prantal Jayanand Thakar*, AIR 1974 SC 1728 = 45 Comp. Cas. 43 (SC); *CIT v M. Ramaswamy*, (1985) 151 ITR 122 (Mad); *K. N. Narayanan v ITO*, (1984) 145 ITR 373 (Ker); *CWT v Babulal Jatia*, (1982) 137 ITR 540 (Cal)].”.

Page 1655: section 45:

After the paragraph titled “*Evidentiary value of a registered document*”, *add*,—

“Transfer of bigger asset into smaller lots in different years.—In *Addl. CIT v Madan Lal Ahuja* [(1982) 136 ITR 640 (All)], the assessee purchased land in lots. The entire land was combined into one unit and was developed under one scheme. Sale of plots was spread over a number of years. It was held that unless the entire transactions of sales were complete, the capital gains or loss earned or incurred on the venture could not be correctly determined. In so holding, the High Court has taken inspiration from some of the cases discussed under the heading “*Profits of adventure, when assessable?*” at pages 807-808 of Vol. 1.

It seems that their Lordships' attention was not drawn to the provisions of section 45, whereunder the capital gain is deemed to be the income of the previous year in which the relevant transfer took place.

However, in *CIT v Shakuntala Rajeshwar* [(1986) 160 ITR 840 (Del)], four sale deeds were executed in four successive years assigning, by each such deed, one-fourth interest of the transferor. It was held that capital gains accrued proportionately in each of the four years and not when the first deed was executed.”.

Pages 1655-1656: section 45:

On the subject "*Year of chargeability in case of compulsory acquisition*", reference may be made to—

- (1) *Smt. Jeejeebai Shinde v CIT*, (1983) 144 ITR 693 (MP), special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 50 [in case of compulsory acquisition, the transfer must be deemed to have taken place on the date of publication of notification and not during the year when compensation was determined and paid to the assessee].
- (2) *M. B. Karmarkar & D. L. Gokhale v CIT*, (1984) 150 ITR 234 (Bom) [passing of property or vesting of it takes place when the compensation is awarded. In case of any subsequent enhancement in the compensation, the enhanced amount is assessable for the year in which it was so enhanced]. Also see, *Harish Chandra v CIT*, (1985) 154 ITR 478 (Del).
- (3) *Buddaiah v CIT*, (1985) 155 ITR 277 (Karn) [title vests in the Government under section 16 of the Land Acquisition Act, 1894, on the taking of possession of land by the authority concerned pursuant to an award passed under section 11 of that Act]. Also see, *CIT v Purshottambhai Maganbhai Hatheesing*, (1985) 156 ITR 150 (Guj); *S. Appala Narasamma v CIT*, (1987) 168 ITR 17 (AP); *Syed Abdul Basir v CIT*, (1987) 33 Taxman 126 (Raj).

Also see, *CIT v Shantilal Bhogilal Nanavati*, (1983) Taxation 68(1)-19 (Guj).

It may be noted that for and from assessment year 1988-89, the year of chargeability in case of compulsory acquisition is to be ascertained as per the provisions of section 45(5) newly inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988."

Page 1658: section 45:

After the paragraphs titled "*Co-owners to be separately assessed*", add,—

"In *CIT v V. Pattabhiraman* [(1987) 164 ITR 786 (Mad)], a property was bequeathed in favour of four persons subject to life estate to their respective mother. The mothers surrendered their life interest in favour of these four persons, thus these four becoming co-owners. Capital gains arising on sale of such property was held taxable in the hands of each of the co-owners separately and not in the status of 'body of individuals'.

But in *CIT v C. D. Karaka* [(1983) 13 Taxman 1 (Guj)], three persons jointly purchased land in 1956, constructed two buildings in 1961 and 1962, and let them out. In the year 1967, a certain portion of the vacant land was sold by separate sale deeds which resulted in capital gains. It was held that an association of persons was, in these circumstances, formed in the year 1961 not only for earning rental income but also to hold the vacant land and to realise income therefrom in a suitable mode, including the sale

thereof. Therefore, the capital gains were held taxable in the hands of the AOP and not in the hands of each of the co-owners individually.”.

Page 1659: section 45:

After the paragraph titled “*Question of law*”, *add*,—

“The question whether the assessee was entitled to claim short-term capital loss on reduction of share capital of a company under High Court order is a question of law [*Cement Distributors Ltd. v CIT*, (1986) 24 Taxman 777 (Del)].”.

Page 1660: section 45/2(42A):

In line 8 from top, between ‘asset’ and ‘Capital gains or losses’, *insert*,—
“However, for and from assessment year 1988-89, in the case of shares held in a company, such shares are to be treated as short-term capital assets if these are held for a period of twelve months or less immediately preceding the date of their transfer. This amendment has been brought in as a result of insertion of a proviso before the *Explanation* to section 2(42A) by the Finance Act, 1987 (11 of 1987) with effect from 1st April, 1988.”.

Page 1660: section 45/2(42A):

After line 14 from top, *add*,—

“Where shares are acquired by an assessee on conversion of debentures held by him and such shares are subsequently sold, for ascertainment of the period of holding of such shares, the crucial date is the date on which the conversion was effected and not the date of purchase of debentures [see, *Mrs. A. Ghosh v CIT*, (1983) 141 ITR 45 (Cal)].

In the facts of *Ratansi Narayan Patel v CIT* [(1987) Taxation 87(3)-56 (Guj)], the asset transferred by the assessee was held to be a long-term capital asset giving rise to long-term capital gains.

For ascertainment of the period of holding in case of an immovable property, the crucial date is the date on which the assessee acquired title to that property on execution of a registered conveyance and not the date of entering into an agreement for sale [*CIT v Smt. R. R. Sood*, (1986) 161 ITR 92 (Bom)].”.

Page 1660: section 45/2(42A):

At the end of line 24 from top, *add*,—“Thus, under such specific provision, loss arising from sale of National Defence Remittance Certificates can only be considered long-term capital loss and not short-term capital loss [*CIT v Bhandari & Co.*, (1985) 152 ITR 687 (Mad)].”.

Page 1663: section 45:

After line 10 from top, *add*,—

“As a result of amendment of section 80T by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987, long-term capital gains not

exceeding Rs. 10,000 (in place of Rs. 5,000 upto 31st March, 1987) are exempt in their entirety for assessment year 1987-88.

It may be noted that section 80T has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, and similar provisions have been made part of section 48 also substituted by that Act.”.

Page 1666: section 45:

Before the paragraph titled “*Tax on long-term capital gains in case of company-assessee*”, add,—

“The above state of law continued upto assessment year 1986-87.

For assessment year 1987-88.—As a result of amendment of section 80T and omission of the Twelfth Schedule, by the Finance Act, 1986, with effect from 1st April, 1987, the first Rs. 10,000 are to be deducted. Thereafter, of the balance—

- (i) a deduction of an amount equal to 50 per cent. of the long-term capital gains, relating to building or lands or any rights in buildings and lands or gold, bullion or jewellery, is to be deducted from, and 50 per cent. is to be included in, the total income;
- (ii) a deduction of an amount equal to 60 per cent. of the long-term capital gains, relating to other capital assets is to be deducted from, and 40 per cent. is to be included in, the total income.

It is also made clear that where the assessee has long-term capital gains relating to buildings or lands or rights in buildings or lands as also to other capital assets, the initial deduction of Rs. 10,000 is to be given first in respect of long-term capital gains relating to buildings or lands and if the amount of such capital gains is less than Rs. 10,000, the balance is to be adjusted against long-term capital gains relating to gold, bullion or jewellery and the balance, if any, against the long-term capital gains relating to any other capital assets.

For and from assessment year 1988-89.—In this respect, provisions of the newly substituted section 48 by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, explain the manner of dealing with long-term capital gains tax levy. Reference in this connection may be made to paragraphs 25.1 to 25.7 of the departmental circular No. 495, dated 22nd September, 1987, which has been reproduced at pages 6251 to 6252, *post*. It may be noted that in these new provisions, where there is a loss under the head of long-term capital gains, the same process of ascertainment, *mutatis mutandis*, is to be adopted.”.

Page 1667: section 45:

Before the paragraphs titled “*Firm’s gains assessable in the hands of the firm*”, add,—

“The above state of law continued up to assessment year 1985-86.

For assessment years 1986-87 and 1987-88.—The tax rate in case of A above is 50 per cent. and the tax rate in case of B above is 40 per cent.

For and from assessment year 1988-89.—It may be noted that special provisions contained in section 115 for determination of tax on capital gains in case of company-assesseees have been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. Instead, section 48, as substituted by that Act, makes provision for deduction of specified percentages of the long-term capital gains accruing or arising even to company-assesseees. Reference in this connection may be made to paragraphs 25.1 to 25.7 of the departmental circular No. 495, dated 22nd September, 1987, reproduced at pages 6251 to 6252, *post*.”

Page 1669: section 46:

In line 6 from bottom, after “106 ITR 368 (SC)].”, *add*,—“Also see, *H. H. Maharaja Raja Pawan Dewas v CIT*, (1982) 138 ITR 518 (MP).” [on the subject “Distribution of assets to shareholders on liquidation of a company”].

Page 1671: section 46(2):

At the end of line 17 from top, *add*,—“Also see, *Addl. CIT v Uma Devi Budhia: Addl. CIT v Ram Prasad Budhia*, (1986) 157 ITR 478 (Pat).

In computing the capital gains under section 46(2), on amounts received by a shareholder on the liquidation of a company, the cost of acquisition of the capital asset, viz., the shares and any cost of improvement thereto will have to be deducted. If the payment by the liquidator is made, not in lump sum but, in instalments, the cost of acquisition cannot be deducted at every point of time when there is a receipt from the liquidator. It should be deducted from the earlier payments and once the cost of acquisition is wiped out, any further sum received would be completely liable to tax as capital gains [*CIT v Inland Agencies Pr. Ltd.*, (1983) 143 ITR 186 (Mad)].”.

Page 1671: section 46(2):

Before the paragraph titled “Section 46(2) is not retrospective”, *add*,—

“Section 46(2) is a charging section.—Section 46(2) is a charging section independent of section 45. Therefore, even if a particular income cannot be brought to charge under section 45, the same can be brought to charge under section 46(2), if the conditions laid down in that section are satisfied [*CIT v M. A. Chidambaram*, (1984) 147 ITR 180 (Mad)].

For the facts and decision, see, *Chettined Co. Pr. Ltd. v CIT*, (1984) 147 ITR 724 (Mad).”.

Page 1672: section 46(2):

Before the text of section 47, *add*,

“Trading shares do not fall within the mischief of section 46.—Trading shares cannot be regarded as capital assets for the purposes of the charge of capital gains. This is so because ‘any stock-in-trade’ held for the purposes of assessee’s business or profession is specifically excluded from the definition of the expression ‘capital asset’ coined in section 2(14). If the trading

shares are not capital assets, there can be no question at all of bringing to charge any dividends therefrom upon a winding up as the gains rising from capital assets under section 45 read with section 46(2) [*CIT v G. Rajam*, (1987) 64 CTR (Mad) 256].”.

Pages 1674-1676: sections 47(i) & (ii):

On the subject “*Distribution of capital assets on partition or dissolution, etc.*”, reference may also be made to—

- (1) *Popular Engineering Co. v CIT*, (1983) 140 ITR 398 (MP) [Holding that if the assets of a firm are sold, before its dissolution, by the partners of the firm to one of them, the gains resulting from such sale are exigible to capital gains tax levy].
- (2) *CIT v Smt. Vimla Lal*, (1983) 143 ITR 16 (All) [The assessee relinquished all her rights in favour of other co-owners. It was held that there was no body of individuals constituted by the assessee along with the other co-owners. The relinquishment amounted to a transfer and it was not a case of distribution of capital assets on account of the dissolution of the body of individuals. Therefore, section 47(ii) was not attracted].
- (3) *CIT v Babulal Nathmal Sharma*, (1987) 32 Taxman 587 (Bom) [One of the partners of a two-partner firm relinquished his share for a sum of Rs. 15,000. It was held that there was a dissolution of the firm and the provisions of section 47(ii) were attracted].

Page 1676: section 47(ii):

After the paragraphs titled “*Joint-ownership dissociated*”, add,—

“**Section 47(ii) omitted.**—Section 47(ii) [whereunder any distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons was not to be regarded as a transfer for the purposes of section 45] has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The omission is consequential to the insertion, by that Act, of section 45(4).”.

Pages 1676-1677: section 47(iii):

On the subject “*Transfer of capital assets under a gift, will or irrevocable trust—section 47(iii)*”, reference may also be made to—

- (1) *Addl. CIT v Mrs. Avtar Mohan Singh*, (1982) 136 ITR 645 (Del) [holding that the only meaning of the word ‘under’, in section 47(iii) can be ‘involving’ or ‘by way of’; to the extent to which there is a shortfall of consideration, the transfer can be said to be ‘under’ or ‘by way of’ a gift; the word ‘gift’ being used in its ordinary meaning in common parlance and not in the sense in which it is used in the Gift-tax Act, 1958, or the Transfer of Property Act, 1882].
- (2) *CIT v Tibruz Mustafa Bilgen*, (1986) 157 ITR 723 (Mad) [section 47(iii) deals only with actual gift and not with deemed gift].

Also see, *CIT v Jankut Mustafa Bilgen*, (1986) 157 ITR 728 (Mad).

Page 1678: section 47:

Before line 5 from bottom, *add*,—

“In *Forbes Forbes Campbell & Co. Ltd. v CIT* [(1984) 150 ITR 529 (Bom)], it has been held, without reference to the provisions contained in clauses (v) and (vi) of section 47, that amalgamation of a 100 per cent. subsidiary with its parent company did not give rise to capital gains chargeable to tax for the assessment year 1964-65.”

Page 1679: section 47(vii):

After line 12 from top, *add*,—

“In *CIT v Master Raghuvier Trust* [(1985) 151 ITR 368 (Karn)], the assessee was a shareholder in a company S. Company S amalgamated with another company under a scheme sanctioned by the High Court. The amalgamated company allotted shares, bonds, debenture, etc., to the assessee for its share-holding in company S. It was, on facts, held that there was no transfer of capital assets of the assessee for consideration so as to attract capital gains tax levy. The court did not express any opinion on the applicability of section 47(vii) in the facts of that case.

Also see, *CIT v H. K. Bhavani*, SLP (Civil) No. 664 of 1981: (1984) 147 ITR (St.) 1 (SC).”

Page 1679: section 47(viii):

On the subject of chargeability of capital gains tax in case of transfer of agricultural land, reference may also be made to—

- (1) *Arundhati Balkrishna v CIT: Balkrishna Harivallabhdas v CIT*, (1982) 138 ITR 245 (Guj), special leave petition dismissed by the Supreme Court: (1984) 149 ITR (St.) 130 [gains arising from sale of land were held exigible to capital gains tax levy as the land was found to be non-agricultural].
- (2) *D. L. F. Housing & Construction Pr. Ltd. v CIT*, (1983) 141 ITR 806 (Del), special leave petition granted by Supreme Court: (1984) 149 ITR (St.) 130 [gains arising from agricultural lands are exempt from capital gains tax levy, if the relevant transfer was effected before 1st March, 1970]. Also see, *D.L.F. United Ltd. v CIT*, (1984) Taxation 75(3)-135 (Del).
- (3) *M. Venkatesan v CIT*, (1983) 144 ITR 886 (Mad) [gains arising on transfer effected on 4th March, 1970, of agricultural land were held exigible to capital gains tax levy].
- (4) *CIT v Alanickal Co. Ltd.*, (1986) 158 ITR 630 (Ker) [gains arising on transfer of agricultural land effected after 1st March, 1970, in rural areas are not exigible to capital gains tax levy because such land continues to be excluded from the definition of ‘capital asset’].

- (5) *CIT v Laxmi Development Co.*, (1987) 34 Taxman 367 (MP) [gains arising from transfer of agricultural land situated within the limits of the Indore Municipal Corporation was held exigible to capital gains tax levy for the assessment year 1977-78].

Also see, *CIT v Bulsar Housing Society Ltd.*, SLP (Civil) No. 942 of 1981: (1983) 143 ITR (St.) 61-2 (SC).

Page 1680: new section 47A:

Before the text of section 48, *add*,—

“New section 47A.—A new section 47A, relating to withdrawal of exemption in certain cases, has been newly inserted by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st April, 1985.

The scope and effect of the newly inserted section 47A have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

‘Withdrawal of exemption in certain cases—new section 47A.—10.1 Under clause (iv) of section 47 of the Income-tax Act, capital gain arising from the transfer of a capital asset by a company to its wholly-owned subsidiary company is exempt from tax. Similarly, under clause (v) of section 47, capital gain arising from the transfer of a capital asset by a subsidiary company to the holding company is also exempt from tax. Exemption under this provision is allowed only if the transferee company is an Indian company.

10.2 The Amending Act has inserted a new section 47A to provide that, if at any time before the expiry of 8 years from the date of transfer of a capital asset referred to in clause (iv) or clause (v) of section 47, such capital asset is converted by the transferee company into, or is treated by it as, stock-in-trade of its business; or the parent company or its nominee, or, as the case may be, the holding company ceases to hold the whole of the share capital of the subsidiary company before the expiry of the period of 8 years aforesaid, the amount of capital gain exempted from tax by virtue of the provisions contained in section 47 of the Act shall be deemed to be income of the transferor company chargeable under the head ‘Capital gains’ of the year in which the transfer took place.

10.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’.”.

Page 1681: section 48:

After line 9 from top, *add*,—

“Section 48 now substituted.—The existing section 48 has been substituted by a new section 48 by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. It may be noted that sections 80T and 115 have been omitted by that Act and their provisions, in a modified form, have been incorporated in the so-substituted section 48.

The scope and effect of the newly substituted section 48, as also of the amendments to section 53, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Modification in the provisions relating to computation of capital gains.—

25.1 Under the existing provisions of section 48 of the Income-tax Act computation of capital gains resulting from the transfer of a capital asset is made by deducting the cost of acquisition, the cost of improvement and the expenditure incurred in connection with transfer from the consideration received on such transfer. In addition to the aforesaid deductions, section 80T provides for certain deductions in respect of long-term capital gains in the case of non-corporate taxpayers. In the case of corporate taxpayers, concessional treatment in respect of long-term capital gains is allowed not by way of deduction but through lower rates prescribed in section 115.

25.2 With the amendment, the statutory deduction or concessions available in sections 80T and 115 have been incorporated in section 48 itself. The present sections 80T and 115 have been omitted.

25.3 The new scheme provides for 100% deduction in all cases where the long-term capital gain does not exceed Rs. 10,000. Where it exceeds Rs. 10,000, the rates of deduction are as under:—

| Status of assessee | Rates of deduction in respect of long-term capital gains relating to buildings or lands or any rights therein or gold, bullion or jewellery hereinafter called (Category I) | Rates of deduction in respect of long-term capital gains relating to other capital assets hereinafter called (Category II) |
|--------------------|---|--|
| (1) | (2) | (3) |
| Company | Rs. 10,000+10% of balance | Rs. 10,000+80% of balance |
| Any other assessee | Rs. 10,000+50% of balance | Rs. 10,000+60% of balance |

In a case where capital gains in relation to both the categories of assets referred to above (*i.e.*, Category I and Category II) are chargeable under the head "Capital gains", the manner of allowing deduction of Rs. 10,000 has been prescribed in the first proviso to the newly introduced section 48. The deduction of Rs. 10,000 will be first allowed against the assets referred to above in Category I, and the balance, if any, against the assets referred to in Category II.

25.4 In cases of compulsory acquisition, the threshold deduction will be restricted to a total amount of Rs. 10,000 in relation to the initial compensation as well as additional compensation received in subsequent years.

25.5 The above deductions referred to in section 48(2) will be given after providing for the exemptions specified in sections 54, 54B, 54D, 54E, 54F and 54G.

25.6 The exemptions provided in sections 53, 54 and 54F in respect of capital gains which are hitherto allowed only to individuals has now been extended to Hindu undivided families also.

25.7 These amendments will take effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years.'”.

Pages 1681-1682: section 48:

On the subject “*Full value of the consideration received or accruing*”, reference may also be made to—

- (1) *Sangameshwar Coffee Estate Ltd. v CIT*, (1983) 139 ITR 736 (Mad) [An agreement was entered into to fell and remove 200 standing trees for a consideration of Rs. 7,25,000. In one year, the purchaser fell and removed 150 trees and paid Rs. 6,25,000. It was held that the entire sum of Rs. 7,25,000 was the full consideration even though only Rs. 6,25,000 were received by the assessee during that year and, consequently, capital gains would have to be calculated on that basis].
- (2) *Raghubar Narain Singh v CIT*, (1984) 147 ITR 447 (Pat) [The assessee, who was a managing director of a bank, held certain shares in that bank. He transferred those shares and delegated powers of management for a consideration received. It was held that such consideration is to be apportioned between the price for shares and the price for delegation of powers of management. The legality or validity of the competency of the assessee to delegate such power was not to be looked into].
- (3) *CIT v M. D. Manohar Rao*, (1985) 155 ITR 696 (AP) [The assessee entered into an agreement for sale of land, whereunder the purchaser was entitled to receive any compensation in excess of the agreed price. Subsequently, the land was acquired by the Government and compensation was awarded at a figure higher than the agreed sale price. It was held that the excess amount of compensation over the agreed sale price was diverted at source by overriding title and the amount equal to the agreed sale price should be made the basis of computation of capital gains].
- (4) *CIT v C. V. Ravanappa Chetty*, (1985) 156 ITR 185 (Mad) [Certain properties were sold by the adoptive mother during the minority of the assessee. These sales were held void by the court. Thereafter, these properties were sold by the assessee, after attaining the age of majority, to the same vendees at price specified in the respective sale deeds. It was held that the amounts that were paid to the adoptive mother in respect of the void sales made by her had nothing to do with the sale consideration received by the assessee for effecting the sales].
- (5) *CIT v Smt. M. Subaida Beevi*, (1986) 160 ITR 557 (Ker) [Though the solatium payable under section 23(2) of the Land Acquisition Act, 1894, is in consideration of the compulsory nature of the acquisition and is an extra payment and does not form part of the market value of the land acquired, it is nevertheless

compensation and forms part of the consideration received or accruing as a result of the transfer by way of acquisition of a capital asset. But the severance compensation, which is awarded to the assessee for the reason that the acquisition has injuriously affected other land belonging to the assessee, cannot be treated to form part of the consideration received or accrued as a result of the transfer of the capital asset]. Also see, *Nagpur Electric Light and Power Co. Ltd. v CIT*, (1987) 33 Taxman 14 (Bom).

Pages 1682-1683: section 48:

At the end of the paragraphs titled "*Expenses incurred wholly and exclusively in connection with the transfer*", add,—

"From the language of section 48, it follows that all expenditure incidental to the transfer must be deducted in computing the amount of capital gains whether it was expenditure incurred in the previous year in which the transfer took place or in any other year. The concept of the expenditure being relatable to the year in which it was incurred will not be quite appropriate in the context of the computation of capital gains in view of the language of section 45 read with section 48 [*CIT v Rohtak Textile Mills Ltd.*, (1982) 138 ITR 195 (Del), special leave petition granted by the Supreme Court: (1984) 149 ITR (St.) 131].

In the facts of the following cases, the concerned amount was held deductible in computing the capital gains:—

- (1) *CIT v C. V. Soundararajan*, (1984) 150 ITR 80 (Mad) [amount paid to the mother, having right of residence in the property, for obtaining relinquishment of such right].
- (2) *CIT v Maithreyi Pai*, (1985) 152 ITR 247 (Karn) [interest on borrowings for acquisition of the capital asset, if such interest was not allowed under any other head].
- (3) *CIT v R. Ramanathan Chettiar*, (1985) 152 ITR 489 (Mad) [expenses incurred in connection with the preparing of lay out and getting the same approved from the requisite authority, where the land was sold after converting into house sites].
- (4) *CIT v Smt. M. Subaida Beevi*, (1986) 160 ITR 557 (Ker) [expenditure incurred by the assessee in conducting a land acquisition reference case before a civil court for enhanced compensation]. Also see, *CIT v R. Ranga Setty*, (1986) 159 ITR 797 (Karn).
- (5) *CIT v Shakuntala Rajeshwar*, (1986) 160 ITR 840 (Del) [amount paid to a tenant to persuade him to vacate the asset in order to facilitate the development of the asset which was ultimately sold was held allowable as a deduction under section 48(i).

But, an amount paid by the landlord to the tenant in regard to the surrender of the tenancy right was held not an expenditure incurred in connection with the compulsory acquisition of the asset

concerned: *CIT v R. Ranga Setty*, (1986) 159 ITR 797 (Karn). Similarly, amount paid to protected tenant to relinquish her right in the asset acquired was held not deductible: *CIT v T. Sreenivasa Rao*, (1987) 166 ITR 593 (AP)].

- (6) *Sah Roop Narain v CIT*, (1987) 32 Taxman 453 (Raj) [expenditure incurred on payment of legal fee in connection with the transfer was held allowable as a deduction under section 48(i)].

In the facts of the following cases, the concerned amount was held not deductible in computing the capital gains:—

- (1) *CIT v Bilquis Jahan Begum*, (1984) 150 ITR 508 (AP) [estate duty paid in respect of transferred asset].
(2) *Sah Roop Narain v CIT*, (1987) 32 Taxman 453 (Raj) [traveling and other expenses].”.

Page 1685: section 48:

After serial No. (3), giving the illustrative cases about ascertainment of cost of acquisition, *add*,—

“(4) The assessee acquired certain debentures in December, 1962. In October, 1963, these were exchanged for equity shares. Such equity shares were sold. It was held that the cost of acquisition of such equity shares was the price the debentures would have fetched if sold on the date debentures were exchanged for equity shares [*Mrs. A. Ghosh v CIT*, (1983) 141 ITR 45 (Cal)].

(5) One of the partners of the assessee-firm died. The estate of the deceased partner was paid also in respect of the proportionate share of the deceased partner in the appreciation of the shares held by the assessee-firm in its investment portfolio. The assessee-firm sold certain such shares. It was held that the extra amount paid to the estate of the deceased partner towards his share in the appreciation in the value of these shares could not be added to the original cost of those shares for the purpose of computation of capital gains resulting from such sale [*CIT v Patel Bros.*, (1984) 145 ITR 614 (Bom)].

(6) Estate duty paid in respect of the transferred asset neither forms part of the cost of acquisition nor cost of improvement [*CIT v Bilquis Jahan Begum*, (1984) 150 ITR 508 (AP)].

(7) Cost of acquisition of an asset becoming subsequently exigible to capital gains tax levy with effect from a specified date is not the value of that asset on such specified date but is the cost incurred by the assessee, etc., when it was originally purchased or the statutorily substituted fair market value under the provisions of section 55(2) [see, *CIT v M. Ramaiah Reddy*, (1986) 158 ITR 611 (Karn); *B. N. Vyas v CIT*, (1986) 159 ITR 141 (Guj); *CIT v Smt. M. Subaida Beevi*, (1986) 160 ITR 557 (Ker)].

(8) The cost of acquisition was held to be the one mentioned in the conveyance deed itself [*CIT v Smt. R. R. Sood*, (1986) 161 ITR 92 (Bom)].

(9) Interest paid by the assessee-firm to its partners on their capital contributions used for the purchase of a capital asset cannot be treated as cost of acquisition of the capital asset [*M. L. G. Enterprises v CIT*, (1987) 167 ITR 11 (Karn)].

(10) The cost of acquisition of an asset brought in the firm by one of the partners as capital contribution was held to be that value which was credited, in the books of the firm, to the account of the partner concerned [*Rajdoot Hotel Enterprise Corporation v CIT*, (1987) 167 ITR 167 (MP)].”.

Page 1685: section 48:

After the paragraph titled “*Cost of improvement*”, add,—

“**Capital gains accruing in foreign currency to be converted into Indian rupee.**—Where capital gains arises or accrues in terms of foreign currency, the same has to be converted into Indian rupee on the basis of the exchange rate prevailing on the date when such capital gain accrues or arises [*D. A. Graham & N. G. F. Graham v CIT*, (1985) 154 ITR 879 (Karn); *Stumpp & Schuele GMBH v CIT*, (1986) 160 ITR 581 (Karn)].”.

Page 1685: section 48:

Lines 30-31 from top: The decision of the Bombay High Court in *H. Holck Larsen v CIT* [(1972) 85 ITR 285 (Bom)] has been affirmed by the Supreme Court in *CIT v H. Holck Larsen* [(1986) 160 ITR 67 (SC)].

Page 1685: section 48:

Before line 2 from bottom, add,—

“**Capital gains on transfer of right shares.**—Where an assessee holds right shares and sells the same, the capital gain resulting from such sale can be determined by deducting the cost of acquisition of such shares from the full value of consideration received therefor. In such a case, there is no question of averaging the price of right shares and original shares for the purpose of determining the cost of acquisition of the right shares [*Addl. CIT v Raj Kumari Bangur: Addl. CIT v Chandri Devi Bangur*, (1985) 154 ITR 868 (Raj)].”.

Page 1686: section 48:

In line 18 from top, for “82 ITR 781 (SC)”, read “82 ITR 788 (SC)”.

Page 1686: section 48:

At the end of the paragraphs titled “*Original shares*”, add,—

“In *Escorts Farms (Ramgarh) Ltd. v CIT* [(1983) 143 ITR 749 (Del), special leave petition granted by the Supreme Court: (1987) 166 ITR (St.) 110], the Delhi High Court has dissented from the decisions of the Calcutta

High Court in *Sutlej Cotton Mills Ltd. v CIT* [(1979) 119 ITR 666 (Cal)] and *CIT v Steel Group Ltd* [(1981) 131 ITR 234 (Cal)] and has held that where an assessee has sold the original shares in regard to which bonus shares had been issued and the option of taking the statutorily substituted fair market value on the specified date is not available to the assessee because the original shares are purchased after the specified date, the actual cost to the assessee of the original shares has to be spread over on both the original shares and the bonus shares and, for the purpose of computing capital gains resulting from the transfer of original shares, the cost of acquisition of the original shares has to be determined on such averaging.

Where an assessee, holding original shares as well as right shares sells original shares, the capital gain arising from such sale is to be computed after deducting the actual cost incurred by the assessee for acquiring the original shares from the full value of the consideration received therefor. In such a case, it is not possible to determine the cost of acquisition of the original shares by averaging the cost of original shares and the cost of right shares [*Addl. CIT v Raj Kumari Bangur: Addl. CIT v Chandri Devi Bangur*, (1985) 154 ITR 868 (Raj)].”.

Page 1687: section 48:

After line 19 from top, *add*,—

“It may be that an assessee, who is holding original shares as well as right shares, has received bonus shares with reference to both these categories of holdings. In such a case, the cost of bonus shares which were issued on the basis of original shares has to be determined by spreading over the cost of original shares over the original shares and the bonus shares taken together. Similarly, the cost of bonus shares issued on the basis of the right shares has to be determined by spreading over the cost of the right shares over the right shares and the bonus shares taken together [*Addl. CIT v Raj Kumari Bangur: Addl. CIT v Chandri Devi Bangur*, (1985) 154 ITR 868 (Raj)]. Also see, *CIT v Escorts Farms Ramgarh Ltd.*, SLP (Civil) No. 1893 of 1980: (1983) 140 ITR (St.) 2 (SC).”.

Pages 1687-1688: section 48:

After the paragraphs titled “*Original as well as bonus shares sold together*”, *add*,—

“In *CIT v T.V.S. & Sons Ltd* [(1983) 143 ITR 644 (Mad)], the assessee held shares in a company numbering 21,507, out of that bonus shares were 8,109. The cost of acquisition of 13,398 [21,507–8,109] shares was Rs. 14,47,254. All these shares, original as well as bonus, along with, entire block of shares of the company were compulsorily acquired by the Government. The assessee received a sum of Rs. 42,46,342 from the Government as consideration. It was held that the capital gain amounted to Rs. 27,99,088 [Rs. 42,46,342 – Rs. 14,47,254]. The assessee’s claim that a sum of Rs. 6,58,250 should also be taken as the cost of 8,109 bonus shares worked out by applying the averaging formula was negatived.”.

Page 1691: section 49:

After line 19 from top, *add*,—

“IV. The Taxation Laws (Amendment) Act, 1984.—By this Act, a new sub-section (3) has been inserted in section 49, with effect from 1st April, 1985.

The scope and effect of the newly inserted section 49(3) have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

‘Cost with reference to certain modes of acquisition—section 49.—11.1 The Amending Act has inserted a new sub-section (3) in section 49 of the Income-tax Act to provide that in a case where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or clause (v) of section 47 of the Act, is deemed, by virtue of the provisions of new section 47A to be income chargeable under the head ‘Capital gains’, the cost of acquisition of such asset to the transferee company shall be the cost for which such asset was acquired by it.

11.2 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’

V. The Finance Act, 1987.—By this Act, the existing sub-clause (b) of section 49(1)(iii) has been substituted by a new sub-clause (b), with effect from 1st April, 1988. The substitution has been necessitated as a consequence of the insertion, by that Act, of section 45(4) and omission, by that Act, of section 47(ii).

Page 1692: section 49:

After line 28 from top, *add*,—

“Section 49(1)(iii)(a) speaks of succession, inheritance or devolution. The expression ‘inheritance’ only denotes property passing on death from the deceased to his heirs. But the expression ‘succession’ might denote not only succession on the death of a person either by testate succession or by intestate succession, but also other modes of change of ownership *inter vivos*, as when one says that there is a succession to a business when there is a mere transfer of the business as a going concern from one living proprietor to another. The expression ‘devolution’, however, is a term of widest import. It certainly includes a devolution or passing of property on the death of a person. But devolution of interest is not confined merely to testamentary or intestate succession. Any process recognized by the law under which property changes hands from one owner to another even *inter vivos*, if it cannot altogether be regarded as a disposition, transfer or conveyance or succession or inheritance, must be regarded as a devolution [*CIT v S. Krishnamurthy*, (1985) 152 ITR 669, 673-4 (Mad)].”.

Page 1693: section 49:

Before the text of section 50, *add*,—

“On the subject ‘*Amalgamation of companies—cost of acquisition in the hands of the amalgamated company*’, reference may also be made to *CIT v Delta Jute Mills Co. Ltd.*, (1986) 159 ITR 215 (Cal); *CIT v Delta Jute Mills Co. Ltd.*, (1986) 159 ITR 220 (Cal)].

Cost of acquisition in case of blended property.—Under section 49(1) (iv), which has been inserted by the Taxation Laws (Amendment) Act, 1975 (41 of 1975), with effect from 1st April, 1976, the cost of acquisition in case of blended property, if the blending was effected on or after 1st January, 1970, is the cost for which the previous owner (the coparcener who effected the blending) of the property acquired it, as increased by the cost of any improvement of the asset incurred or borne by the previous owner or the assessee, as the case may be.

In cases relating to assessment years prior to 1976-77, it has been held that in case of blended property, the cost of acquisition is—

- the cost incurred by the blending coparcener [*Addl. CIT v Madan Lal Jain & Sons*, (1983) 140 ITR 200 (Del); *Deena Nath Nanda & Sons v CIT*, (1984) 149 ITR 96 (Del); *CIT v S. Krishnamurthy*, (1985) 152 ITR 669 (Mad)];
- the written down value of the concerned asset in the hands of the blending coparcener [*CIT v N. S. Krishna Rao*, (1983) 144 ITR 347 (Mad)];
- the market price of the asset concerned on the date of blending [*CIT v Ashwin M. Patel*, (1983) 144 ITR 566 (Guj), **doubted in** *Deena Nath Nanda & Sons v CIT*, (1984) 149 ITR 96 (Del)];
- nil* in the hands of the HUF [*CIT v Trikamlal Maneklal*, (1987) Taxation 85(3)-271 (Bom)].”.

Page 1694: section 50:

At the end of the paragraphs titled “*Legislative amendment*”, *add*,—

“Section 50 has also been amended by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987. As a result of this amendment the crucial date, for assessment year 1987-88, is 1st April, 1974, in place of 1st January, 1964, which was operative for assessment years 1978-79 to 1986-87.

By the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), a new section 50 has been substituted in place of the existing section 50, with effect from 1st April, 1988.

For the scope and effect of the newly substituted section 50, reference may be made to item (o) of paragraph 6.4 of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6066 to 6067, *ante*, in connection with section 32.”.

Page 1694: section 50:

At the end of the paragraph titled "*When depreciation has been allowed to the assessee*", add,—

"Section 50 makes it quite clear that in order to reduce the cost of acquisition to the written down value, the depreciation must be obtained by the assessee and not by the previous owner [*CIT v Bhupender Singh Atwal*, (1983) 140 ITR 928, 935 (Cal)]. In that case, broadly speaking, on the dissolution of a firm, the partner-assessee got a plant and machinery. That was transferred by the partner to a company. The question arose whether the cost of acquisition of that asset in the hands of the firm, which was the previous owner, or the written down value of that asset in the hands of the firm should be taken the basis for the computation of capital gains. There was no dispute about the fact that the assessee had not obtained any deduction on account of depreciation. It was held that the expressions 'the previous owner' and 'the assessee' are not synonymous in the scheme of sections 49 and 50. Therefore, for computing capital gains in the hands of the assessee, it is not possible to deduct the depreciation obtained by the firm (previous owner). Thus, the cost of acquisition in the hands of the firm (previous owner) was to be treated as cost of acquisition in the hands of the assessee by virtue of the provisions contained in section 49(1)(iii)(b). The provisions of section 50 were held not attracted."

Page 1703: section 52:

After line 34 from top, add,—

"Section 52 now omitted.—Section 52 has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988."

Pages 1704 and 1705: section 52(1):

Line 14 from bottom of page 1704 & lines 6 and 5 from bottom of page 1705: The decision in *Sivakami Co. P. Ltd. v CIT* [(1973) 88 ITR 311 (Mad)] has been affirmed on different grounds by the Supreme Court in *CIT v Shivakami Co. Pr. Ltd* [(1986) 159 ITR 71 (SC)].

Page 1709: section 52(2):

In lines 24-25 of the paragraph titled "*Section 52(2) does not apply to a bona fide transaction*", after Taxation 64(3)-115 (Del)", add,— "*=* (1982) 136 ITR 645 (Del); *CIT v A. Venkataraman*, (1982) 137 ITR 846 (Mad); *Brijmoni Devi v CIT*, (1983) 142 ITR 427 (Cal); *CIT v Smt. Archana R. Dhanwatay*, (1984) 147 ITR 21 (Bom); *CIT v Smt. Ushabai S. Dhanwatay*, (1984) 147 ITR 455 (Bom); *CIT v Ramkrishna Ramnath Properties Pr. Ltd.*, (1984) 147 ITR 742 (Bom); *S. M. A. Siddique v CIT*, (1984) 148 ITR 307 (Mad); *CIT v Balram Prasad*, (1984) 150 ITR 687 (All); *CIT v Pradyuman Kumar Kachhawa*, (1985) 156 ITR 105 (Raj); *CIT v Tibruz Mustafa Bilgen*, (1986) 157 ITR 723 (Mad); *CIT v Jankut Mustafa Bilgen*, (1986) 157 ITR 728 (Mad); *CIT v M. Nath*, (1986) 158 ITR 184 (Cal); *CIT v Jagdamba Charity Trust*,

(1986) 158 ITR 157 (Del); *Darshan Kumar Oswal v CIT*, (1986) 159 ITR 513 (Punj); *CIT v Hari Charan Shyam Sundar Pr. Ltd.*, (1986) 159 ITR 703 (Cal); *N. Seenappa v CIT*, (1987) 163 ITR 253 (Karn); *CIT v Raja D. V. Seetharamayya Bhadur*, (1982) 30 CTR (Mad) 169; *CIT v Basudeoprasad Budhna*, (1984) 41 CTR (Bom) 400; *CIT v Sunil Kumar*, (1987) 61 CTR (Del) 160; *CIT v Mahendra Singh*, (1986) Taxation 82(3)-277 (Raj); *CIT v Smt. Sushila Devi*, (1986) Taxation 82(3)-277 (Raj); *CIT v Raja Vikramaditya Singh*, (1987) Taxation 85(3)-195 (MP)".

Pages 1710-1711: section 52(2):

At the end of the paragraph titled "*The two requisite conditions of section 52(2) must be proved by the revenue*", add,—"*Also see, L. B. Khara-wala v ITO*, (1984) 147 ITR 67 (Guj); *Madanmohan Kishanlal v CIT*, (1985) 151 ITR 746 (Guj); *Century Spng. & Mfg. Co. Ltd. v ITO*, (1985) 153 ITR 209 (Bom); *CIT v C. C. Patel & I. C. Patel*, (1986) 161 ITR 879 (Bom); *CIT v Sundaram Industries Ltd.*, (1987) 166 ITR 35 (Mad).".

Page 1712: section 52:

At the end of the paragraphs titled "*No gift-tax after resort to section 52*", add,—

"In *CGT v Hasan Mumtaz* [(1987) 168 ITR 412 (All)], the gift-tax assessment was upheld in respect of the amount representing the difference between the declared consideration and the deemed value of the consideration even though such amount was taxed under section 52."

Page 1712: section 52(2):

In lines 10-11 of the paragraph titled "*No capital gains tax after resort to gift-tax*", after "*Taxation 64(3)-115 (Del)*", add,— "*=(1982) 136 ITR 645 (Del); CIT v Anand Parkash Kapoor*, (1985) 154 ITR 429 (Punj); *CIT v Jagdamba Charity Trust*, (1986) 158 ITR 157 (Del); *CIT v Bharat Development Pr. Ltd.*, (1986) 158 ITR 159 (Del)".

Page 1712: section 52(2):

At the end of the paragraph titled "*Previous approval of the Inspecting Assistant Commissioner essential*", add,—

"The Commissioner of Income-tax is not competent to set aside, in exercise of his revisional powers under section 263, an assessment order in a case where the Income-tax Officer has passed the same without following the requirement of obtaining the previous approval of the Inspecting Assistant Commissioner as required under section 52(2) for invoking the provisions of that section. This is so because the omission on the part of the Income-tax Officer to obtain the previous approval of the Inspecting Assistant Commissioner does not make the assessment order to be one prejudicial to the interests of the revenue so as to empower the Commissioner to

exercise his powers under section 263 [*CIT v Smt. Chandra Prabha Pateria*, (1984) 145 ITR 578 (MP)].”.

Page 1713: section 53:

After the paragraph titled “1922 Act provisions”, add,—

“Legislative amendments.—I. The Taxation Laws (Amendment) Act, 1984.—By this Act, a new section 53 has been substituted in place of the then existing section 53, with effect from 1st April, 1985, i.e., for and from assessment year 1985-86.

The scope and effect of the newly substituted section 53 have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

‘Capital gains exempt from tax—section 53.—12.1 Under the existing provisions, capital gains arising from the transfer of any capital asset, being building, or land appurtenant thereto, the income from which is chargeable under the head “Income from house property” is exempt from tax in cases where the consideration for the transfer does not exceed Rs. 25,000 and the aggregate of the fair market values of all such capital assets owned by the assessee immediately before the transfer does not exceed Rs. 50,000.

12.2 The Amending Act has substituted section 53 by a new section to provide that long-term capital gain arising from the transfer of a residential house will be exempt from tax in cases where the consideration received or accruing as a result of the transfer does not exceed Rs. 2 lakhs. In cases where such consideration exceeds Rs. 2 lakhs, the capital gain would be exempted proportionately. In other words, the amount of capital gain to be exempted under this provision would bear the same proportion to the amount of capital gain arising from the transfer as the amount of Rs. 2 lakhs bears to the amount of consideration received or accruing from the transfer. To illustrate, if the consideration for the transfer is Rs. 6 lakhs, one-third of the capital gain arising from the transfer will be exempt from tax. The exemption under the new section 53 will not be available if the assessee owns any other residential house on the date of such transfer.

12.3 Section 54 of the Income-tax Act provides exemption in respect of long-term capital gains arising from the sale of a residential house in cases where such capital gain is utilised by the taxpayer for purchasing or constructing another residential house within the specified period. Sub-section (1) of section 54 provides that the exemption under the said section will be available in cases where the capital gain arises from the transfer of long-term capital asset “to which the provisions of section 53 are not applicable†”. These provisions should be construed to imply that it will not be permissible for a taxpayer who has opted to avail of the tax exemption

† The above words within the inverted commas have been omitted from section 54 by the Finance Act, 1985, s. 14 (w.e.f. 1-4-1985).

under section 53 to also seek partial exemption in respect of the remaining capital gain under section 54. In other words, the above quoted words should not be construed to imply that the exemption under section 54 will stand barred in all cases where long-term capital gains are derived from the sale of a residential house owned by the taxpayer.

12.4 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’.

II. The Finance Act, 1987.—By this Act, the opening paragraph of section 53 has been amended in two respects. As a result of the first amendment, the beneficial provisions of section 53 have also specifically been made applicable to a Hindu undivided family. The other amendment is of a consequential nature.

Further, an *Explanation* has been added at the end of section 53 which provides that in sections 53, 54, 54B, 54D, 54E, 54F and 54G, references to capital gain is to be construed as references to the amount of capital gain as computed under section 48(1)(a).

For the scope and effect of these amendments, reference may be made to paragraphs 25.1 to 25.7 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6251-6252, *ante.*”.

Page 1721: section 54:

After line 8 from top, *add*,—

“III. The Finance Act, 1985.—The scope and effect of the amendment made by this Act in section 54 have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Consequential amendment in the provisions relating to exemption of capital gains from a residential house.—**23.1** Section 53 of the Income-tax Act as amended by the Taxation Laws (Amendment) Act, 1984, with effect from 1st April, 1985, provides for complete exemption of long-term capital gain arising from transfer of a residential house in cases where the consideration for the transfer does not exceed Rs. 2 lakhs. In cases where the consideration exceeds Rs. 2 lakhs, the capital gain is exempted proportionately. Section 54 of the Income-tax Act provides for exemption of long-term capital gain arising from the sale of a residential house, in a case where the capital gain is used for construction or purchase of another residential house. Section 54 in terms provides that the provisions of the said section shall apply to a long-term capital asset “to which the provisions of section 53 are not applicable”.

23.2 The above-quoted words in section 54 have been omitted by the Finance Act, 1985. The effect of this omission will be that exemption under the said section shall not be denied in cases where a part of the capital

gain arising from transfer of a house property is exempt under section 53 of the Income-tax Act.

23.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'

IV. The Finance Act, 1986.—By this Act, sub-sections (1) and (2) of section 54 have been amended with effect from 1st April, 1987. The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

21.1 Modification in the provisions relating to exemption of capital gains arising on the transfer of a residential house.—Section 54 of the Income-tax Act provides that the long-term capital gains arising from the transfer of a residential house are exempt from income-tax if the assessee, within a period of one year before or after the date of transfer purchases or within a period of three years after the date of such transfer constructs a residential house. The exemption of capital gains is restricted to the amount of such gains utilised for the purchase or construction of the new residential house. Where the amount of capital gains is greater than the cost of the house so purchased or constructed, the balance amount of the capital gains is charged to tax. If, however, the amount of capital gains is equal to or less than the cost of the residential house so purchased or constructed, the amount of capital gains is totally exempted from income-tax. The process of selling or purchasing a residential house either to or from a private source or a Government agency or a co-operative society involves steps which in most cases require a longer time frame than one year. The assessee, therefore, would experience difficulty in complying with the time-limit of one year for purchasing a new house after the date of transfer of the residential house. Hence, by amending this provision, the period of one year has been extended to two years. Where the transfer is by way of compulsory acquisition and the compensation awarded is enhanced by any court, tribunal or other authority, the period of one year after the date of receipt of the additional compensation for purchase of a residential house has also been increased to two years. As a consequential amendment in sub-sections (8) and (8A) of section 155 of the Income-tax Act meant for amending the assessment order, the period of one year has similarly been raised to two years.

21.2 These amendments will apply in relation to the assessment year 1987-88 and subsequent years.'

V. The Finance Act, 1987.—Section 54(1) has been amended and section 54(2) has been newly substituted by this Act, with effect from 1st April, 1988.

The scope and effect of the amendments made in sections 54, 54B, 54D and 54F by the Finance Act, 1987, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'New scheme for deposits in respect of exemption from capital gains.—

26.1 Under the existing provisions of sections 54, 54B, 54D and 54F, long-term capital gains arising from the transfer of any immovable property used for residence, land used for agricultural purposes, compulsory acquisition of lands and buildings and other capital assets are exempt from income-tax if such gains are reinvested in new assets within the time allowed for the purpose. The original assessment needs rectification whenever the taxpayer fails to acquire the corresponding new asset.

26.2 With a view to dispense with such rectifications of assessments, the amendments made to sections 54, 54B, 54D and 54F provide for a new scheme for deposit of amounts meant for reinvestment in the new asset. After the aforementioned amendments, where the amount of capital gains or the net consideration, as the case may be, is not appropriated or utilised by the taxpayer for acquisition of the new asset before the date for furnishing the return of income, it shall be deposited by him on or before the due date of furnishing the return of income, under section 139(1), in an account with a bank or institution and utilised in accordance with a scheme framed by the Central Government in this regard. The amount already utilised together with the amounts of deposits shall be deemed to be the amount utilised for the acquisition of the new asset. If the amount deposited is not utilised fully for acquiring the new asset within the period stipulated, the capital gain relatable to the unutilised amount shall be treated as the capital gain of the previous year in which the period specified in these provisions expires. In such cases, the threshold deduction of ten thousand rupees as well as the deduction under section 53 will not be admissible. Further, the taxpayer shall be entitled to withdraw such amount in accordance with this scheme. This scheme will be applicable in relation to the new section 54G also.

26.3 The following examples illustrate as to how the amended provisions relating to the new sections for deposit will be applied:

Computation of capital gains:

| | |
|--|--------------|
| 1. Sale consideration (date of sale 2-6-1987) | Rs. 10 lakhs |
| 2. Cost of acquisition (date 1-5-1983) .. | Rs. 3 lakhs |
| 3. Investment in construction of the new property by due date of filing the return for the assessment year 1988-89 | Rs. 4 lakhs |
| Capital gain | Rs. 7 lakhs |

Situation 1:

Where no deposit in accordance with the scheme is made by the taxpayer:

| | |
|---|--------------|
| Sale consideration | Rs. 10 lakhs |
| Cost of acquisition [to be allowed u/s. 48(1)(a)] | Rs. 3 lakhs |
| Balance | Rs. 7 lakhs |
| Deduction u/s. 54(1)(i) | Rs. 4 lakhs |

| | | | |
|---|----|----|----------------|
| Balance | .. | .. | Rs. 3 lakhs |
| Deduction u/s. 53: 7×2/10 | .. | .. | Rs. 1.4 lakhs |
| Balance | .. | .. | Rs. 1.60 lakhs |
| Deduction u/s. 48(2): Rs. 10,000+Rs. 75,000 | | | Rs. 0.85 lakhs |
| Net capital gain liable to tax in the assessment year 1988-89 | | .. | Rs. 75,000 |
| <i>Situation 2:</i> | | | |
| Amount deposited as per scheme by the due date of filing the return for the assessment year 1988-89 | .. | .. | Rs. 3 lakhs |
| Hence amount deemed utilised for the acquisition of new asset | .. | .. | Rs. 7 lakhs |
| Capital gain liable for tax for the year 1988-89 | | | Rs. Nil |
| (i) If the amount of Rs. 3 lakhs is utilised in the construction by 2-6-1990, capital gain in the assessment year 1991-92 | .. | | Rs. Nil |
| (ii) If the amount of Rs. 3 lakhs not utilised in the construction of the property, capital gain for the assessment year 1991-92: | | | |
| Amount of deposit | .. | .. | Rs. 3 lakhs |
| Less deduction u/s. 48(2) (initial deduction of Rs. 10,000 not being allowed), 50% of the amount | .. | .. | Rs. 1.5 lakhs |
| Net capital gain charged to tax in the year 1991-92 | .. | .. | Rs. 1.5 lakhs |

26.4 These amendments will take effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years.'."

Page 1722: section 54:

At the end of the paragraph titled "*Land appurtenant to building*", add,—
 "The tests to determine the question when a land can be said to be appurtenant to a building have been discussed in *CIT v Zaibunnisa Begum* [(1985) 151 ITR 320 (AP)].".

Page 1723: section 54:

In line 11 from top, after "17 CTR (Mad) 349", add,— "(1984) 145 ITR 170 (Mad); *CIT v R. Mala*, (1982) 135 ITR 302 (Mad); *CIT v K. N. Srinivasan*, (1987) 163 ITR 320 (Mad)."

However, the other contrary view is that in section 54 the use of the past continuous tense only meant that whenever used in the preceding two years, the house should have been used by the assessee as a residence for himself or his parents. The word 'in' read with 'mainly' could never mean

'continuously' and so the house need not have been continuously used for the period of two years for purposes of residence by the assessee or a parent of his prior to its sale in order to enable him to claim the exemption under section 54 up to assessment year 1982-83 [*S. Harnam Singh Suri v CBDT*, (1984) 145 ITR 159 (Del)]. Also see, *M. Abdul Sattar v CIT* (1987) 163 ITR 642 (Karn)].".

Page 1724: section 54:

After line 2 from top, *add*,—

"In *CIT v J. R. Subramanya Bhat* [(1987) 165 ITR 571 (Karn)], a building consisting of ground and first floor was owned by the assessee. The ground floor was occupied by the assessee and the first floor was let out. That building was sold in February, 1977. Prior to that, in March, 1976, he had commenced construction of a new house which was completed in March, 1977. It was held, on facts, that the assessee was entitled to the benefit of section 54 even though the construction of the new house was started prior to the transfer of the old house."

Page 1725: section 54:

After line 8 from top, *add*,—

"The benefit of section 54 could not, up to assessment year 1987-88, be claimed by a Hindu undivided family [*CIT v C. Chandrashekar*, (1984) 145 ITR 429 (Karn); *Smt. Rampyaribai Narayandas v CIT*, (1984) 147 ITR 223 (MP); *Kanhyalal and Ram Swaroop v CIT*, (1984) 149 ITR 157 (MP); *Kanhaiyalal and Ramswaroop v CIT*, (1984) 149 ITR 158 (MP)]".

Page 1725: section 54:

Before the paragraph titled "*New asset*", *add*,—

"That was the state of law up to assessment year 1987-88.

New section 54 also applies to Hindu undivided families.—As a result of the amendment of section 54(1) by the Finance Act, 1987 (11 of 1987), the benefit of section 54 can also be availed by a Hindu undivided family for and from assessment year 1988-89."

Page 1726: section 54:

On the subject "*The then word 'mainly' should also be inferred in connection with the new asset*", reference may also be made to *CIT v Kodandas Chanchlomal*, (1985) 155 ITR 273 (Guj).

Page 1727: section 54:

At the end of the paragraph titled "*Benefit extends also to the legal representative*", *add*,—"Also see, *Late Mir Gulam Ali Khan v CIT*, (1987) 165 ITR 228 (AP)".

Page 1727: section 54:

Before section 54A, *add*,—

"Departmental circular.—The following departmental circular is relevant to section 54 as also to section 54F:—

'Capital gains tax—Whether investment in a flat under the Self-financing Scheme of the Delhi Development Authority would be construction for purpose of sections 54 and 54F of the Income-tax Act, 1961.—Sections 54 and 54F of the Income-tax Act, 1961, provide that capital gains arising on transfer of a long-term capital asset shall not be charged to tax to the extent specified therein, where the amount of capital gain is invested in a residential house. In the case of purchase of a house, the benefit is available if the investment is made within a period of one year† before or after the date on which the transfer took place and in case of construction of a house, the benefit is available if the investment is made within three years from the date of the transfer.

2. The Board had occasion to examine as to whether the acquisition of a flat by an allottee under the Self-financing Scheme of the Delhi Development Authority amounts to purchase or is construction by the D.D.A. on behalf of the allottee. Under the Self-financing Scheme of the Delhi Development Authority, the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the D.D.A. to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.

3. The Board have been advised that under the above circumstances, the inference that can be drawn is that the D.D.A. takes up the construction work on behalf of the allottee and that the transaction involved is not a sale. Under the scheme, the tentative cost of construction is already determined and the D.D.A. facilitates the payment of the cost of construction in instalments subject to the condition that the allottee has to bear the increase, if any, in the cost of construction. Therefore, for the purpose of capital gains tax, the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in instalments does not affect the legal position stated above. In view of these facts, it has been decided that cases of allotment of flats under the Self-financing Scheme of the Delhi Development Authority shall be treated as cases of construction for the purpose of capital gains.

† Reference may, now, be made to amendment made in section 54 by the Finance Act, 1986, with effect from 1-4-1987, and that made in section 54F by the Finance Act, 1987, with effect from 1-4-1988.

4. The contents of the circular may be brought to the notice of all the officers working under you.' [Circular No. 471, dated 15th October, 1986].".

Pages 1729-1730: section 54B:

At the end of the paragraphs titled "*Legislative amendments*", *add,—*

"Section 54B(1) has been amended and section 54B(2) has been newly substituted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. For the scope and effect of these amendments, reference may be made to paragraphs 26.1 to 26.4 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6264 to 6265, *ante*."

Page 1731: section 54B:

At the end of paragraphs titled "*Conditions for applicability*", *add,—*

"In *CIT v T. Narayanaswamy* [(1985) 156 ITR 194 (Mad)], the above condition (iii) was held satisfied even where the agricultural land was earlier used by the Hindu undivided family of which the assessee was a coparcener and he received that land as a result of partition.

In *CIT v Jayalakshmi Rajendran* [(1985) 152 ITR 744 (Mad)], it has been held that for satisfying the above condition (iv), the purchase of any other agricultural land must be made through a registered conveyance. A mere agreement to purchase is not sufficient.

Also see, *CIT v Janrudhan Das*, (1987) 163 ITR 806 (All).".

Pages 1734-1735: section 54D:

At the end of the paragraphs titled "*Legislative amendments*", *add,—*

"Section 54D(1) has been amended and section 54D(2) has been newly substituted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. For the scope and effect of these amendments, reference may be made to paragraphs 26.1 to 26.4 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6264 to 6265, *ante*."

Page 1738: section 54D:

Before the text of section 54E, *add,—*

"**Industrial undertaking in section 54D—implication of.**—Section 54D, which grants an exemption, must be construed liberally and the expression 'industrial undertaking' occurring in that section must be given its popular meaning [*P. Alikunju, M. A. Nazeer Cashew Industries v CIT*, (1987) 166 ITR 804 (Ker)]. In that case, a lodging house constructed by the assessee was held to be an 'industrial undertaking' within the meaning of section 54D."

Page 1751: section 54E:

After line 25 from top, *add,—*

"**III. By the Finance Act, 1983.**—Section 54E has been amended by this

Act with effect from 1st April, 1983, i.e., for and from assessment year 1983-84. The scope and effect of these amendments have been elaborated in paragraphs 37.1 to 37.5 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages xc-xcii of Vol. 4.

IV. By the Taxation Laws (Amendment) Act, 1984.—By this Act, a second proviso has been added to section 54E(1).

The scope and effect of the said proviso have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

'Extension of time for re-investment in cases where compensation for compulsory acquisition is delayed.—**10.1** Section 54E of the Income-tax Act provides for exemption of capital gains in cases where the net consideration arising from the transfer of a long-term capital asset is re-invested within six months in specified financial assets, namely, the National Rural Development Bonds and special series of units of the Unit Trust of India notified by the Central Government in this behalf. The time of six months allowed for re-investment may, however, not be adequate in some cases of compulsory acquisition where the whole or a part of the compensation is not immediately paid by the Government.

10.2 With a view to avoiding hardship in such cases, the Amending Act has inserted a second proviso to section 54E(1) of the Income-tax Act to provide that, in a case where the full amount of compensation awarded for compulsory acquisition of an asset is not received by the assessee on the date of such acquisition, the period of six months referred to in the said provision shall, in relation to so much of such compensation as is not received on the date of the transfer, be reckoned from the date immediately following the date on which such compensation is received by the assessee.

10.3 The aforesaid amendment takes effect from 1st April, 1984, and will accordingly apply in relation to the assessment year 1984-85 and subsequent years.'

V. By the Finance Act, 1986.—By this Act, section 54E(1) has been amended. The scope and effect of the amendments made by this Act have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

22.1 *Exemption in respect of "long-term capital gains" in cases where the net consideration received or accruing as a result of transfer is invested or deposited in specified financial assets.*—Under the provisions of section 54E of the Income-tax Act, capital gains arising from the transfer of a "long-term capital asset" are exempted from income-tax if the net consideration received as a result of the transfer is invested or deposited in specified financial assets within a period of six months from the date of the transfer. Where only a part of the consideration is so invested or deposited, the exemption from tax on capital gains is granted proportionately. Where the capital asset is compulsorily acquired by the Government and addi-

tional compensation is paid to the taxpayer in any subsequent year, the capital gain attributable to the additional compensation received is also exempted from the tax if the amount of the additional compensation is invested or deposited in the specified financial assets within a period of six months from the date on which such additional compensation is received. Under the existing provisions, the financial assets specified for the purpose are—

- (a) notified Central Government securities;
- (b) notified special series of units of the Unit Trust of India;
- (c) notified National Rural Development Bonds; and
- (d) notified debentures issued by the Housing and Urban Development Corporation Ltd.

With a view to promoting investments in desired channels and to enlarge the option available to the assessee in this regard, notified bonds issued by public sector companies have been included as specified assets for this purpose. As per *Explanation* inserted “public sector company”, for this purpose, means any corporation established by or under any Central, State or Provincial Act or a government company as defined in section 617 of the Companies Act, *i.e.*, a company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company. The holding of fifty-one per cent. or more of shares (equity or even preference shares carrying no voting rights) by the Central and/or any State Government—and not municipal and other local authorities or public corporations—makes a company, a Government company.

22.2 The amendment will be applicable for the assessment year 1987-88 and subsequent years.’.

VI. *By the Finance Act, 1987.*—By this Act, sub-sections (1) and (2) of section 54E have been amended, sub-sections (3), (4) and (5) of that section have been omitted; sub-section (6) has been renumbered as sub-section (3) of section 54E and sub-section (3) as so renumbered has been amended.

The amendments of sub-sections (1) and (2) and the renumbered sub-section (3) are of consequential nature. As a result of the omission of sub-sections (3), (4) and (5), which dealt with re-investment of enhanced compensation, the benefit available on re-investment will not be available in respect of additional compensation received.

All these amendments will take effect from 1st April, 1988, *i.e.*, for and from assessment year 1988-89.

Page 1751: section 54E:

Before the text of section 54F, *add.*—

“Other notifications.—(1) Notification No. GSR 504(E), dated 21st June,

1983 [(1983) 143 ITR (St.) 42] notifies the National Rural Development Bonds (Second Issue).

(2) Notification No. GSR 804(E), dated 27th October, 1983 [(1983) 144 ITR (St.) 63] notifies the special series of units issued under the Capital Gains Unit Scheme, 1983. The text of this Scheme has been printed at (1984) 145 ITR (St.) 33-46.

(3) Notification No. 7244, dated 13th April, 1987, notifies 3 years' IDBI Capital Bonds issued by the Industrial Development Bank of India.

(4) Notification No. 7425, dated 15th July, 1987, notifies 3-year HUDCO Capital gains debentures issued by the Housing and Urban Development Corporation Ltd.

Departmental circular.—The following departmental circular is relevant to section 54E:—

'Section 54E—Whether the investment of earnest money or advance received in specified assets before the date of transfer vitiates claim for exemption—Clarification regarding.—Section 54E of the Income-tax Act, 1961, provides for exemption of long-term capital gains if the net consideration is invested by the assessee in specified assets within a period of six months *after* the date of such transfer. A technical interpretation of section 54E could mean that the exemption from tax on capital gains would not be available if part of the consideration is invested *prior* to the date of execution of the sale deed as the investment cannot be regarded as having been made within a period of six months *after* the date of transfer.

2. On consideration of the matter in consultation with the Ministry of Law, it is felt that the foregoing interpretation would go against the purpose and spirit of the section. As the section contemplates investment of the net consideration in specified assets for a minimum period and as earnest money or advance is a part of the sale consideration, the Board have decided that if the assessee invests the earnest money or the advance received in specified assets before the date of transfer of asset, the amount so invested will qualify for exemption under section 54E of the Income-tax Act, 1961.' [Circular No. 359, dated 10th May, 1983.]

Provisions interpreted.—In *Kesho Ram Passy v Reserve Bank of India* [(1984) 146 ITR 16 (Punj)], the requisite amount for purchase of National Rural Development Bonds was deposited in the Reserve Bank of India within six months from the date of the sale of the capital asset. Vital information was furnished in the relevant columns of the application, although one column of the application was not filled in. It was held that the assessee has complied with the provisions of section 54E as to the investment of the net consideration in the Bonds within six months from the date of transfer.

Question of law.—In *CIT v Ruby Trading Co. Pr. Ltd* [(1987) 32 Taxman 500 (Raj)], the Tribunal was directed to refer the question whether the assessee was entitled to the benefit of section 54E."

Page 1753: section 54F:

After the paragraph titled "*Introduction*", *add*,—

"Legislative amendments.—By the Finance Act, 1987 (11 of 1987), subsections (1) and (2) of section 54F have been amended and a new subsection (4) has been inserted in section 54F, with effect from 1st April, 1988. For the scope and effect of these amendments, reference may be made to paragraphs 26.1 to 26.4 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6264 to 6265, *ante*."

Page 1755: section 54F:

Before the text of section 55, *add*,—

"Departmental circular.—The departmental circular No. 471, dated 15th October, 1986, which has been reproduced at page 6267, *ante*, in connection with section 54, is also relevant to section 54F."

Page 1755: new section 54G:

Before the text of section 55, *add*,—

"New section 54G.—A new section 54G, relating to exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area, has been inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. This insertion is consequential to the omission, by that Act, of section 280ZA, relating to tax credit certificates for shifting of industrial undertaking from urban area.

The scope and effect of the newly inserted section 54G have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Exemption of capital gains on shifting of industrial undertakings from urban areas.—**27.1** Under section 280ZA, if a company owning an industrial undertaking shifts the undertaking from an urban area, it qualifies to receive a tax credit certificate in respect of capital gains arising from the transfer of plant, machinery etc. This provision has been omitted with effect from 1st April, 1988, by the Finance Act, 1987.

27.2 With an intent to promote decongestion of urban areas as also balanced regional growth, the newly inserted section 54G exempts capital gains on transfer of plant, machinery, land, building, etc., used for the purposes of the business of industrial undertaking. The transfer must be effected in the course of, or in consequence of, shifting of the industrial undertaking from an urban to a non-urban area. Capital gains would be exempt, to the extent it is utilised within a period of one year before or three years after the date of transfer in—

- (i) acquiring new plant, machinery, land, building, etc., for the purposes of the business of the undertaking in the area to which it is shifted; and
- (ii) incurring expenses in the purchase of a new plant and machinery,

etc., and in the shifting of the establishment of the undertaking; and

- (iii) incurring other expenses as would be specified in a scheme to be drawn up by the Central Government.

The exemption on capital gains will be available only if the industrial undertaking is shifted to a non-urban area within a period of one year before or three years after the date of transfer of the plant, machinery, etc., referred to above.

27.3 The new scheme for deposit of amounts for reinvestment of capital gains within the specified period will also be applicable to gains arising from the transfer of plant, machinery, etc., effected in the course of, or in consequence of, the shifting of industrial undertaking from urban to non-urban areas.

27.4 The benefit of exemption under section 54G will be available for shifting of integrated independent units of the industrial undertaking, from an urban to a non-urban area. For example, in the textile industry, if a distinct part of the industrial undertaking like a spinning unit is shifted from an urban to non-urban area, without shifting the weaving unit, the exemption provided for in section 54G will still be allowable.

27.5 These amendments will take effect from 1st April, 1988, and will, accordingly, apply in relation to assessment year 1988-89 and subsequent years.'”.

Page 1758: section 55:

Before line 11 from bottom, *add*,—

“Section 55 has also been amended by the Finance Act, 1986. By this Act, references to ‘1st day of January, 1964’, wherever these occur in section 55, have been substituted by the references ‘1st day of April, 1974’, with effect from 1st April, 1987, *i.e.*, for and from assessment year 1987-88.

Section 55 has further been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1988. This amendment is of a consequential nature.

Section 55 has also been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Capital gains arising on transfer of goodwill.—28.1 In principle, the gains arising on transfer of goodwill amount to capital gains liable to tax. The judicial view, however, has been that it is only where an asset costs something to an assessee in terms of money, that the provisions relating to levy of capital gains tax can apply. Goodwill being a self-generated asset, not costing anything in terms of money, has been held to be outside the purview of capital gains tax [*CIT v B. C. Srinivasa Shetty*, (1981) 128 ITR 294 (SC)]. Even in a case where an assessee transferred goodwill which he had acquired earlier on payment of a price, the gain from such

transfer was held by a High Court to be not taxable, on the ground that the cost of improvement in respect of this asset could not be ascertained in terms of money.

28.2 The Finance Act, 1987, by amending section 55 has provided for the method of computing the cost of acquisition as well as the cost of improvement, where goodwill is transferred. Where goodwill is purchased by the transferor, the cost of acquisition will be taken to be the purchase price and in all other cases it shall be taken to be *nil*. The cost of improvement in either case would be taken to be *nil*.

28.3 The intention in bringing to tax the capital gains on transfer of goodwill is only to cover those cases where goodwill is actually transferred. Those cases where the transfer is notional, for example, when a new partner is admitted to a firm, would not be covered by the amendment. The new provisions will also not apply to professional firms.

28.4 The amendment shall come into force with effect from 1st April, 1988, and will, accordingly, apply to the assessment year 1988-89 and subsequent years.'".

Page 1759: section 55:

Before, line 10 (excluding footnote) from bottom, *add*,—

"Only those expenses which have been actually incurred by the assessee in making additions and alterations to the concerned capital asset can be taken into account for ascertaining the 'cost of improvement' in relation to that capital asset [*Parmanand Bhai Patel v CIT*, (1984) 149 ITR 80 (MP)].".

Page 1762: section 55:

At the end of the page, *add*,—

"It may be noted that the specified date '1st January, 1964' has been substituted, with effect from 1st April, 1987, by '1st April, 1974', as a result of the amendments made by the Finance Act, 1986.

For ascertaining the fair market value of the original shares as on the specified date for computing the capital gains arising on their transfer, any issue of bonus shares subsequent to that specified date is wholly extraneous and irrelevant and cannot be taken into consideration [*Addl. CIT v Madan Mohan Lall Shri Ram Pr. Ltd.*, (1985) 153 ITR 134 (Del)].

Where the option of substituting the fair market value has been exercised in respect of a capital asset, which was earlier not includible in the definition of 'capital asset', the fair market value of such asset as on the specified date, and not on the date on which such asset became a 'capital asset', has to be ascertained [*CIT v M. Ramaiah Reddy*, (1986) 158 ITR 611 (Karn); *CIT v Smt. M. Subaida Beevi*, (1986) 160 ITR 557 (Ker)].

Choice to exercise option rests with the assessee.—The option to substitute the fair market value on the specified date has been given to the

assessee. Where the assessee has not exercised that option, it is not open to the appellate authorities to direct the ascertainment of the cost of acquisition of the capital asset transferred on the basis of the fair market value of such asset on the specified date [*Bawa Shiv Charan Singh v CIT*, (1984) 149 ITR 29, 38 (Del)].”.

Page 1763: section 55:

In line 14 from top, for ‘100 ITR 651 (Karn)’, read, ‘100 ITR 621 (Karn)’.

In lines 18-19 of the paragraph titled “*Fair market value—implication of*”, after “122 ITR 633 (Bom)”, add,—“; *CIT v Oriental Government Security Life Assurance Co. Ltd.*, (1983) 141 ITR 215 (Bom)”.

Page 1763: section 55:

At the end of the paragraphs titled “*Fair market value—implication of*”, add,—

“In *Addl. CIT v Smt. Indira Bai* [(1985) 151 ITR 692 (AP)], the properties transferred were subject-matter of rent control regulations and the tenants could not be evicted except in accordance with the provisions of the Rent Control Act. The fair market value of these properties was ascertained by the Tribunal by capitalising the net rental income therefrom. It was held that the Tribunal was justified in adopting such method of valuation.

In *Grindlays Bank Ltd. v CIT* [(1986) 158 ITR 799 (Cal)], it has been held that in the case of a company which is a going concern and whose shares are not quoted on the stock exchange, the profits which the company has been making and should be capable of making or, in other words, the profit-earning capacity of the company would ordinarily determine the fair market value of its shares. The break-up value will not be appropriate for valuation of shares of such a company. Also see, *CIT v Swadeshi Mining & Mfg. Co. Ltd.*, (1979) 116 ITR 259 (Cal).

In *CIT v S. Balasubramaniam* [(1986) 159 ITR 288 (Mad)], it has been held that rule 1D of the Wealth-tax Rules, 1957, is not in terms applicable where the fair market value of the shares is to be determined for the purpose of computation of capital gains. But that rule 1D affords a good guideline which can be resorted to for determining the value of the shares. In this case, the method of ascertaining value of shares by adopting break-up value method has also been explained.

In the facts of *Syed Abdul Basir v CIT* [(1987) 33 Taxman 126 (Raj)], the finding about the fair market value reached by the Tribunal on the basis of appreciation of evidence was held to be one of fact.

But in the facts of *CIT v Kalpetta Estates Ltd.: CIT v Greenham Estates Pr. Ltd* [(1987) 167 ITR 666 (Ker)], the Tribunal was held not justified in increasing the fair market value as determined by the Income-tax Officer.”.

Page 1767: section 55A:

After the paragraph titled "*Section 55A, when can be invoked?*", add,—

"Reference to the Valuation Officer, when becomes invalid.—Where a reference to the Valuation Officer under section 55A was made by the Income-tax Officer during the pendency of the assessment proceedings for a particular assessment year and the assessment was completed prior to receipt of the valuation report in pursuance of such reference, the reference so made becomes invalid because the purpose for which the reference was made was no longer existent [*Reliance Jute & Industries Ltd. v ITO*, (1984) 150 ITR 643 (Cal)].".

Page 1769: section 56:

At the end of the paragraphs titled "*Subsequent amendments*", add,—

"Clause (ic) of section 56(2) has been inserted by the Finance Act, 1987, with effect from 1st April, 1988. The effect of such insertion is to bring any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees, to charge to income-tax under the head 'Income from other sources'. This amendment will take effect from 1st April, 1988, i.e., for and from assessment year 1988-89."

Page 1774: section 56:

After serial No. (30), giving the illustrative cases where the income was held to be from 'Other sources', add,—

- "(31) income from lottery arising outside India after 1st April, 1972 [*CIT v Chaman Lal*, (1985) 156 ITR 245 (Punj)];
- (32) interest earned by the assessee on investment of share capital in call deposit [*CIT v Seshasayee Paper & Boards Ltd.*, (1985) 156 ITR 542 (Mad)];
- (33) tax due and payable by a foreign employee paid under an agreement by the employer Indian company is income of the employee-assessee assessable as income from other sources [*Zdzizlaw Skakuz v CIT: Bujniewicz Zenon v CIT*, (1986) 158 ITR 420 (AP)];
- (34) income derived from royalty was, in the facts of the case, held other source income [*CIT v Jacobs*, (1986) 160 ITR 570 (Ker)];
- (35) income from undisclosed sources [*Baldeo Prasad v CIT*, (1987) 166 ITR 205 (Pat)];
- (36) income received after discontinuance of business [*CIT v Gaya Sugar Mills Ltd.*, (1986) 160 ITR 933 (Pat)];
- (37) income from letting out printing machinery and distillery plant [*Dharak Ltd. v CIT*, (1987) 163 ITR 734 (Karn)];
- (38) income from ownership flats which were not transferred by a registered conveyance [*Sushil Ansal v CIT*, (1986) 160 ITR 308 (Del). But see, for and from assessment year 1988-89, section 27(ili-a)];

- (39) excess amount introduced in the books over and above the settled figure [*Sethi Pen Stores v CIT*, (1987) 164 ITR 73 (Cal)];
- (40) interest earned on investment of surplus funds [*Murli Investment Co. v CIT*, (1987) 167 ITR 368 (Raj)].”.

Page 1775: section 56:

In line 6 from top, after “59 ITR 547 (SC)”, add,—“; *Brooke Bond & Co. Ltd. v CIT*, (1986) 162 ITR 373 (SC)” [holding that dividend income from shares could not, up to assessment year 1954-55, be treated business income unless such shares are incidental to the assessee’s business].

Pages 1775-1776: section 56:

At the end of the paragraphs titled “*Dividends from foreign companies*”, add,—“Also see, *CIT v Thomas Duff & Co. (India) Pr. Ltd.*, (1982) 137 ITR 798 (Cal); *CIT v Shaw Wallace & Co. Ltd.*, (1983) 143 ITR 207 (Cal); *CIT v Thomas Duff & Co. (India) Pr. Ltd.*, (1984) Tax LR 604 (Cal). The subject has also been discussed at pages 3779-3782 of Vol. 4 under the paragraphs titled ‘*But tax deducted from dividends paid by a foreign company does not amount to income received*’.”.

Page 1779: section 56:

After line 8 from top, add,—

“In the facts of *Addl. CIT v Kanta Behan* [(1983) 140 ITR 187 (Del)], income from composite letting of cinema building, machinery and furniture was held assessable under the residuary head ‘Income from other sources’. Also see, *CIT v Cawnpore Club, Ltd.*, (1984) 146 ITR 181 (All); *CIT v Khalid Mehdi*, (1987) 165 ITR 685 (AP).

But, in *CIT v Bhaktawar Construction Pr. Ltd* [(1986) 162 ITR 452 (Bom)], the building was let out to tenants under lease agreements. The tenants were also provided with air-conditioning facilities. It was held that there was no letting of the installation of the air-conditioning plant. Therefore, there was no inseparable letting of the machinery, etc., so as to bring the case under section 56(2)(iii). The income was taxable under section 22.

Also see, *CIT v K. Narendra*, (1983) 37 CTR (Del) 95.”.

Page 1780: section 56:

At the end of the paragraphs titled “*Income from rent for building and amenities*”, add,—

“In *CIT v Model Mfg. Co. Pr. Ltd* [(1986) 159 ITR 270 (Cal)], the service charges realised by the assessee were held not part and parcel of income derived from house property assessable under section 22 but held assessable under the head ‘Income from other sources’.”.

Pages 1781-1782: section 57:

At the end of the paragraphs titled “*Legislative amendments*”, add,—

“Section 57(ii) has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from

1st April, 1988. These amendments are consequential to the omission, by that Act, of section 32(1A) and sub-sections (1) and (2) of section 34.

Section 57(*ia*) has been newly inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. This new clause (*ia*) provides for deduction in the case of income of the nature referred to in section 2(24)(x), which is chargeable under the residuary head. The deduction in such a case is to be allowed in accordance with the provisions of the newly inserted section 36(1)(*va*).”.

Page 1783: section 57:

Line 4 from top: The decision in *CIT v Rajendra Prasad Moody* [(1978) 115 ITR 519 (SC)] has been followed in *CIT v Gautam Sarabhai* [(1984) 19 Taxman 353 (Guj)]; *CIT v Woolcombers India Ltd* [(1984) 41 CTR (Cal) 63].

Page 1783: section 57:

At the end of the page, *add*,—

“In *CIT v Public Utilities Investment Trust Ltd* [(1983) 143 ITR 236 (Bom)], the interest paid on promissory note was held directly connected with the dividend income earned by the assessee and the same was deductible from the dividend income. Also see, *CIT v Public Utilities Investment Trust Ltd.*, (1983) 143 ITR 257 (Bom); *Amarchand Jalan v CIT*, (1986) 160 ITR 805 (Bom).

But, in *K. J. Somaiya & Sons Pr. Ltd. v CIT* [(1985) 155 ITR 605 (Bom)], interest was paid on moneys borrowed for purchase of shares, which were immediately donated to a charitable trust. Such interest was held not deductible because such interest was not paid for acquiring an income-earning asset.

Also see, *CIT v Swaran Singh Kanwar*, SLP (Civil) No. 10284 of 1980: (1983) 143 ITR (St.) 39 (SC).”.

Page 1784: section 57(ii):

At the end of the paragraphs titled “Expenditure allowable from hire on machinery, etc.—section 57(ii)”, *add*,—

“In the facts of *CIT v Premchand Jute Mills Ltd* [(1987) 164 ITR 289 (Cal)], the assessee was held entitled to carry forward and set off unabsorbed depreciation pertaining to the business carried on in earlier years against its income from letting out the machinery.”.

Page 1786: section 57(iii):

On the subject about the nexus between the expenditure incurred and the income earned, reference may also be made to *Venkateswara Real Estate & Enterprises Pr. Ltd. v CIT*, (1985) 151 ITR 729 (Karn); *Smt. Sunandamma v CIT*, (1987) 164 ITR 446 (Karn).

Page 1788: section 57(iii):

After line 9 from top, *add*,—

“But where there is no possibility of income from a particular source, expenditure incurred in relation to such investment cannot be allowed as a deduction [*CIT v Sujani Textiles P. Ltd.*, (1985) 151 ITR 653 (Mad)].”.

Page 1790: section 57:

After line 20 from top, *add*,—

“Deduction allowable even though not claimed.—There was a duty on the part of the Income-tax Officer to consider whether the assessee was entitled to a deduction from income from other sources, though no such specific claim was made by the assessee. The jurisdiction of the Income-tax Officer is to compute the total income which could be brought to tax in accordance with law. If in fact and in law, the assessee was entitled to a deduction which would have ultimately affected his or her total taxable income, the assessee could not be assessed on a larger income [*CIT v Smt. Archana R. Dhanwatay*, (1982) 136 ITR 355, 360 (Bom)].”.

Page 1791: section 57(iii):

After serial No. (10), giving illustrations of expenditure allowable under section 57(iii), *add*,—

“(11) Urban Land tax paid during the relevant year even though relating to earlier years [*CIT v P. J. Irani*, (1983) 143 ITR 540 (Mad)].

(12) Expenditure incurred for administering the trust earning interest income [*CIT v Trustees of H. E. H. The Nizam's Miscellaneous Trust*, (1986) 160 ITR 253, 269-70 (AP)].”.

Page 1792: section 57(iii):

In lines 3-4 of serial No. (10), after “135 ITR 393 (Karn)”, *add*,—“; *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 787 (Karn); *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 791 (Karn); *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 792 (Karn)” [holding that expenditure incurred on payment of proportionate estate duty on the annuity deposit was not deductible, even though the refund of annuity deposit was assessable as income in the hands of the executor].

Page 1792: section 57(iii):

After serial No. (10), giving illustrations of expenditure held not allowable under section 57(iii), *add*,—

“(11) legal expenses [see, *Guntur Merchants Cotton Press Co. Ltd. v CIT*, (1985) 154 ITR 861 (AP); *United Breweries Ltd. v CIT*, (1986) 162 ITR 527 (Karn)].

(12) overhead expenditure [*CIT v Kar Valves Ltd.*, (1987) Tax LR 852 (Ker)].”.

Page 1794: section 57(iii):

Serial No. (6): The decision in *Smt. Padmavati Jaykrishna v CIT*

[(1975) 101 ITR 153 (Guj)] has been affirmed in *Smt. Padmavati Jaikrishna v Addl. CIT* [(1987) 166 ITR 176 (SC)]. Also see, *Arundhati Balkrishna v CIT*, (1982) 138 ITR 245, 273 (Guj).

Page 1794: section 57(iii):

After serial No. (9), giving illustrative cases where interest paid was held not allowable under section 57(iii), *add,—*

“(10) meeting tax liabilities [*CIT v Thomas Leslie Martin*, (1986) 161 ITR 804 (Cal)].”.

Page 1794: section 57(iii):

At the end of the paragraphs titled “*Interest paid, when not allowable under section 57(iii)*”, *add,—*

“In the facts of the following cases, the interest paid was held not deductible from interest earned on certain deposits, etc., because of lack of nexus between the expenditure and the income:—

- (1) *Smt. Zubedabai v CIT*, (1984) 148 ITR 104 (Bom).
- (2) *H. H. Maharajakumari Meenakshideviavaru v CIT*, (1984) 150 ITR 247 (Karn).
- (3) *Karnataka Forest Plantations Corporation Ltd. v CIT*, (1985) 156 ITR 275 (Karn).

But, where such nexus is established, interest may be allowed deduction [see, *CIT v Smt. Ananth G. Pai*, (1984) 150 ITR 249 (Karn); *CIT v Master Subraya M. Pai*, (1984) 150 ITR 251 (Karn)].”.

Page 1797: section 58:

After line 22 from top, *add,—*

“**VI.** *By the Finance Act, 1985.*—By this Act, a new sub-clause (ia) has been inserted in section 58(1)(a), with effect from 1st April, 1986. The scope and effect of this insertion have been elaborated in paragraphs 21.1 to 21.3 of the departmental circular No. 421, dated 12th June, 1985, at page 6205, *ante*, in connection with section 40A(12).

VII. *By the Finance Act, 1986.*—By this Act, a new sub-section (4) has been inserted in section 58, with effect from 1st April, 1987. The scope and effect of this new section 58(4) have been elaborated in paragraphs 31.1 and 31.2 of the departmental circular No. 461, dated 9th July, 1986, which have been reproduced at page 6409, *post*, in connection with section 115BB.”.

Page 1798: section 59:

At the end of the paragraph titled “*Legislative amendment*”, *add,—*

“The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), has omitted sub-sections (2) and (3) and the *Explanation* occurring under section 59, with effect from 1st April, 1988. These omissions are consequential to the omission, by that Act, of sections 41(2) and 41(2A).”.

Page 1805: section 60:

After serial No. (5), giving illustrations about applicability or otherwise of section 60, *add*,—

“(6) In the fact of *CIT v Trustees of H. E. H. The Nizam's Dependants and Khanazads Trust* [(1983) 139 ITR 517 (AP)], it was held that the transfer of shares was validly effected and income from such shares could not be assessed in the hands of the settlor.

(7) In the facts of *Himalaya Transport Syndicate (Pvt.) Ltd. v CIT* [(1983) 140 ITR 1021 (Punj)], it was held that the bus was virtually transferred in favour of one D, who had been appropriating the income of the bus to herself. Therefore, the income of the bus was not assessable in the hands of the petitioner-company.

(8) Certain coal mines and coal-bearing lands belonged to the assessee. These were leased out to a company under an agreement stipulating payment of commission at a specified rate. As per that agreement, one-third of such commission was to be paid to the assessee and the two-thirds of such commission was to be paid to a private trust. It was held that there was no transfer of the commission-earning asset to the trust. Therefore, the entire commission income was assessable in the hands of the assessee [*CIT v Banwari Lal Agarwala*, (1987) 167 ITR 321 (Pat)].

(9) The assessee created an annual charge of Rs. 12,000 in favour of his wife out of his income from two house properties. Such annual charge was held deductible, for assessment years 1962-63 to 1965-66, under the then section 24(1)(iv). Such annual sum paid to the wife was held not to be treated as income of the assessee by invoking the provisions of section 60 [*CIT v Pravin Ratilal Thakkar*, (1987) 32 Taxman 403 (Bom)].”.

Page 1808: sections 61-63:

After line 7 from top, *add*,—

“In *CIT v Rajendra P. Bhow* [(1987) 166 ITR 359 (Guj)], it has been held that throwing of individual property into HUF property does not involve a transfer even within the meaning of section 63(b).”.

Page 1810: sections 61-63:

At the end of the paragraphs titled “*Settlor or transferor also a beneficiary, effect of*”, *add*,—

“The question of revocability of a particular transfer, even if effected prior to 1st April, 1962, in connection with assessments for and from assessment year 1962-63 has to be determined on the basis of the provisions of section 63 of the 1961 Act. In that view of the matter, a transfer under a settlement deed executed prior to 1st April, 1962, which contained a provision for retransfer directly of a part of the assets settled to the settlor, is revocable within the meaning of section 63 of the 1961 Act and the whole of the income from assets so settled is assessable, for and from assessment year 1962-63, in the hands of the settlor. No doubt, upto

assessment year 1961-62, the revocability related only to that part of income attributable to the assets amenable to retransfer to the settlor, as per the provisions of section 16(1)(c) of the 1922 Act [*Gadi Cheluvaraya Chetty v CIT*, (1984) 150 ITR 60 (Karn)].”.

Page 1815: sections 61-63:

After serial No. (7), giving illustrative cases where transactions were held to be revocable, *add*,—

“(8) Certain properties were settled by the assessee on trust for the benefit of three deities. Under the trust deed, the assessee had the power to remove the trustee and *shebait* and also to alter and modify the trust deed. It was held that the trust was a revocable one. The execution of a supplementary deed, after the close of the relevant accounting year, rectifying the defects in the original deed was held to be of no consequence for that accounting year [*Panchanan Dey v CIT*, (1983) 142 ITR 762 (Cal)].”.

Page 1818: sections 61-63:

After serial No. (11), giving the illustrative cases where the transfers were held to be not revocable, *add*,—

“(12) The assessee created a trust by an indenture dated 24th July, 1959, reserving the right to revoke the trust at any time after the expiry of seven years from the date of execution of the trust deed. It was, on facts, held that there was a legally valid trust. The income of the trust could not be assessed in the hands of the settlor [*CIT v Ghanshyamdas Binani*, (1983) 141 ITR 482 (Cal)].

(13) One G executed a deed of dedication in favour of a temple in respect of certain agricultural property. G continued to manage such property. It was, on facts, held that the dedication was absolute and irrevocable. The property was continued to be managed by G in his capacity as *sarvarakar* [*CIT v Ramchandraji Maharaj Ka Bada Mandir*, (1984) 146 ITR 442 (MP)].

Also see, *Addl. CIT v Hamdard Dawakhana (Wakf)*, (1986) 157 ITR 639, 646 (Del).”.

Page 1824: section 64(1):

In line 12 from bottom, after “(1982) 135 ITR 146 (Guj)”, *add*,—
“ ; *Dr. K. Thomas Varghese v CIT*, (1986) 161 ITR 21 (Ker)” [holding that in case of a firm carrying on profession and having husband and wife both as partners, section 64(1)(i) cannot be invoked].

Page 1831: section 64:

At the end of the page, *add*,—

“IV. \ *By the Taxation Laws (Amendment) Act, 1984*.—By this Act, a new clause (viii) has been inserted in section 64(1), with effect from 1st April, 1985:

The scope and effect of the newly inserted section 64(1)(viii) have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

'Income of individual to include income of spouse, minor child, etc.—section 64.—13.1 The Amending Act has inserted a new clause (viii) in sub-section (1) of section 64 of the Income-tax Act to provide that any income arising, directly or indirectly, to any person or association of persons, from assets transferred, directly or indirectly, on or after 1st June, 1973, otherwise than for an adequate consideration, to the person or association of persons by such individual shall, to the extent to which the income from such assets is for the immediate or deferred benefit of son's wife or son's minor child of the individual or both, be included in computing the total income of such individual.

13.2 This amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'".

Page 1834: section 64(1):

At the end of the paragraphs titled "*Provisions of section 64(1) are intra vires*", *add,—*

"In *K. Krishnaveni v AAC* [(1985) 151 ITR 83 (Mad)], the provisions of section 64(1)(iii), as substituted with effect from 1st April, 1976, have been held to be constitutionally valid."

Pages 1834-1835: section 64(1):

At the end of the paragraph titled "*Section 64(1) concerns the income from the transferred assets and not the date of transfer*", *add,—*

"The tagging under section 64(1) is possible in respect of income from assets transferred to the vulnerable persons, irrespective of the fact whether the transfer was made before or after the commencement of the 1961 Act [*CIT v K. M. Sheth*, (1986) 160 ITR 814 (Bom)]. However, the Rajasthan High Court has taken the view that the provisions of section 64(1) could not be invoked in respect of income from assets transferred prior to 1st April, 1961 [*CIT v Mrs. Ayodhyakumari*, (1985) 154 ITR 604 (Raj), corrected in, (1985) 156 ITR 898 (Raj)]. With great respect to their Lordships, it is submitted that the Rajasthan view is not accurate on the point."

Page 1835: section 64(1):

After line 10 from top, *add,—*

"Section 64 does not override section 5.—See, "*Section 5 vis-a-vis section 64*", at pages 5952-5953, *ante*, in connection with section 5."

Page 1835: section 64(1):

On the subject "*Capital gains included within the sweep of section 64*", reference may also be made to *CIT v K. M. Sheth*, (1986) 160 ITR 814 (Bom).

Pages 1836-1837: section 64(1):

At the end of the paragraphs titled "*Share of losses—whether to be integrated under s. 64?—Law up to assessment year 1979-80*", *add,—*

"The view taken in *Dr. T.P. Kapadia v CIT* [(1973) 87 ITR 511 (Mys)] has been impliedly approved by the Supreme Court in *CIT v J. H. Gotla* [(1985) 156 ITR 323 (SC)] and has been followed in *CIT v Badri Prasad Agarwal* [(1983) 142 ITR 353 (MP)]; *R.M. Goculdas v CIT* [(1985) 151 ITR 67 (Bom)].

The view taken in *Dayalbhai Madhavji Vadera v CIT* [(1966) 60 ITR 551 (Guj)] has impliedly not been approved in *CIT v J. H. Gotla* [(1985) 156 ITR 323 (SC)]."

Page 1837: section 64(1):

At the end of the paragraph titled "*Law for and from assessment year 1980-81*", *add,—* "The said *Explanation 2* has been held to be regarded as being clarificatory in nature as reflecting the correct legal position both under section 16 of the 1922 Act as also under section 64 of the 1961 Act [*R. M. Goculdas v CIT*, (1985) 151 ITR 67 (Bom)]."

Page 1837: section 64(1):

Before the paragraph titled "*Income from the income is outside the sweep*", *add,—*

"Individual's brought forward business loss can be set off against tagged share of profits of spouse or minor children.—It may be that the individual in whose hands the share of profit of the spouse or minor child (ren) is tagged, has brought forward business loss. In such a case, the brought forward business loss can be set off against such tagged share of profit. This is so because such tagged share of profit has to be regarded as business income derived from business carried on by the individual [*CIT v J. H. Gotla*, (1985) 156 ITR 323 (SC)]. Also see, *CIT v Smt. Radhadevi D. Daga*, (1987) 167 ITR 888 (Bom). In view of the above Supreme Court ruling, the view taken in *CIT v A. L. Srinivasan* [(1977) 108 ITR 667 (Mad)] is no more good law.

In *CIT v Smt. Mary Ignatius* [(1983) 141 ITR 954 (Ker)], the share of loss of the individual was held eligible for set off against tagged share of profit of minor children."

Pages 1837-1838: section 64(1):

At the end of the paragraph titled "*Income from the income is outside the sweep*", *add,—* "Also see, *CIT v M.P. Birla*, (1983) 142 ITR 377 (Bom) [holding that dividends from bonus shares issued with reference to the transferred shares are not taggable]."

Page 1838: section 64(1):

Before line 6 from bottom, *add,—*

"In *CIT v Smt. A. Indiramma* [(1986) 160 ITR 829 (Karn)], under a

deed of gift, the assessee was entitled to enjoy the usufruct of a property during her life-time and thereafter the property was to devolve on her minor children in equal shares. The assessee executed a deed of release giving up her life interest in favour of her minor children. It was, on facts, held that the release deed could not be considered as a gift deed. The income from the property could not be assessed in the hands of the assessee under section 64(1).”.

Page 1840: section 64(1):

On the subject “*Clubbing not possible unless there exist specific provisions therefor*”, reference may also be made to *P. I. Chermana v Ag. ITO*, (1984) 147 ITR 688 (Karn).

Page 1840: section 64(1):

After the paragraph titled “*Clubbing not possible unless there exist specific provisions therefor*”, add,—

“**Clubbing possible even though the individual has no other income or taxable income.**—Clubbing is possible in the hands of the individual even though such individual has no other income [*CIT v G. Gopal Rao*, (1985) 151 ITR 308 (AP); *CIT v L.N. Horkeri*, (1986) 162 ITR 513 (Karn)] or his own income does not exceed taxable limit [*Sivalal Sogaji*, In re, (1983) 140 ITR 39 (AP); *CIT v G. Gopal Rao*, (1985) 151 ITR 308 (AP)].”.

Page 1841: section 64(1):

After the paragraph titled “*Extent of tagging*”, add,—

“**Tagged income eligible for straight or other deductions.**—Where the tagged income is of the nature which is eligible for deduction under any of the sections 80A to 80U, the same is so eligible in the hands of the individual in whose hands it is tagged [see, *CIT v Abhay L. Khatau*, (1986) 162 ITR 648 (Bom); *CIT v P. N. Ramaswamy*, (1984) 146 ITR 627 (Mad)].

In *Amarchand Jalan v CIT: CIT v Amarchand Jalan* [(1986) 160 ITR 805 (Bom)], the assessee-individual purchased shares in the names of his wife and minor child out of monies borrowed. It was held that interest paid on monies so borrowed was deductible, in its entirety, in computing the total income of the assessee in whose hands the income from such shares was tagged.

In *CIT v S. K. Nayak* [(1984) 145 ITR 791 (Karn)], the assessee was a managing director of a company, wherein his wife worked as a whole-time director, for which she was paid remuneration. It was held that the net salary [after deduction under section 16(i)] of the wife was includible in the assessee’s hands under section 64(1)(ii).”.

Page 1841: section 64(1):

At the end of the paragraph titled “*Included income to be assessed under which head*”, add,—

"The Mysore High Court decision in *J. H. Gotla v CIT* [(1973) 91 ITR 531 (Mys)] has been affirmed in *CIT v J. H. Gotla* [(1985) 156 ITR 323 (SC)]. In view of this Supreme Court ruling, the view taken by the Bombay High Court in *Kevalchand Nemchand Mehra v CIT* [(1968) 67 ITR 804 (Bom)] does not seem to be accurate on the point.

In *S. M. A. Siddique v CIT* [(1984) 148 ITR 307 (Mad)], the assessee-individual purchased house properties in the names of his wife and minor children with monies borrowed by him. It was held that the income from such properties has to be computed under the appropriate head, namely, 'Income from house property'. Interest paid on such borrowings by the assessee was held deductible from the income from such properties tagged in the hands of the assessee."

Pages 1841-1842: section 64(1):

At the end of the paragraph titled "*Assessment in the hands of the transferee does not act as a bar*", add,— "The remedy of the transferee in such a case would be to move the Commissioner of Income-tax for exercising his powers of revision under section 264 [*Jawaharlal v CIT*, (1983) 144 ITR 620 (MP)].

Advance tax paid by the spouse or minor child is not adjustable against individual's demand.—Where a particular income of a spouse or minor child is taggable with the income of an individual, the advance tax paid by such spouse or minor child even with reference to such income is not eligible for adjustment towards the tax liability of the individual in whose hands such income has been tagged. In such a case, it is open to the spouse or the minor child to apply for refund of the advance tax paid by him [*Shantilal v CIT*, (1984) 145 ITR 789 (MP)]."

Page 1842: section 64(1):

At the end of the paragraphs titled "*Income of the spouse from the membership of the same firm—s. 64(1)(i)*", add,—

"Where the individual ceases to be a partner of the firm wherein his/her spouse is a partner, income of the spouse from the membership of the firm after such cesser cannot be clubbed with the income of the individual [*CIT v Tolaram Jalan*, (1986) 160 ITR 811 (Bom); *Amarchand Jalan v CIT*; *CIT v Amarchand Jalan*, (1986) 160 ITR 805 (Bom); *Jardarali v CIT*, (1987) 65 CTR (MP) 15]."

Page 1843: section 64(1):

On the subject "*Where the individual is a partner in his representative capacity as karta*", one view to the effect that the share-income of the spouse or minor child was not includible in the income of the individual has also been taken in *Prayag Dass Rajgarhia v CIT*, (1982) 138 ITR 291 (Del); *CIT v R. D. Sharma*, (1983) 140 ITR 423 (Gauh); *CIT v Gaurishankar Agarwalla*, (1983) 140 ITR 424 (Gauh); *CIT v Shiv Parshad*,

(1984) 146 ITR 397 (Punj); *CIT v Amar Nath Bhatia*, (1984) 148 ITR 701 (Punj); *C. Arunachalam v CIT*; *CIT v K. Anantha Shenoy*, (1985) 151 ITR 172 (Karn—FB); *CIT v S.K. Thakkar*, (1985) 154 ITR 303 (Bom); *CIT v N.P. Khedkar*, (1986) 157 ITR 276 (Bom); *CIT v Prakash-chandra Basantilal*, (1986) 162 ITR 536 (MP); *CIT v Vallabhdas Manji-bhai*, (1987) 163 ITR 59 (Guj).

Also see, *CIT v Shantilal Mohanlal*, SLP (Civil) No. 3088 of 1980: (1983) 141 ITR (St.) 6 (SC).

The other view that even in such circumstances, the share income of the spouse/minor was includible in the income of the individual concerned has also been taken in *Sahu Govind Prasad v CIT*, (1983) 144 ITR 851 (All—FB); *CIT v S. Balasubramaniam*, (1984) 147 ITR 732 (Mad); *CIT v V Kumaraswami*, (1987) 163 ITR 252 (Mad).

In *CIT v Chanchaldas Sobhrajmal* [(1987) 164 ITR 306 (Raj)], a firm was constituted by the assessee-HUF, entering as a partner through its *karta* and three major coparceners, also admitting two minor coparceners to the benefits of the partnership. It was held that the share of profits of the three major and two minor coparceners could not be included in the assessment of the assessee-HUF.

In *CIT v Dhannamal* [(1984) 148 ITR 141 (MP)], after a partial partition of a Hindu undivided family, a partnership firm was constituted by the erstwhile members. It was held that the share income of the assessee-individual was assessable as his individual income and not that of HUF consisting of himself and his wife. Further, the share income of the minors was includible in his individual income. Also see, *CIT v Dhannamal*, (1986) Taxation 82(3)-1 (MP).

In the facts of *Smt. Rukmani Agrawal v CIT* [(1987) 59 CTR (MP) 69], the share of profit derived by the husband in his capacity as *karta* of his HUF was held includible in the hands of the assessee-wife.

Pages 1843-1844: section 64(1):

On the subject "*Husband and wife*", reference may also be made to *CWT v M. K. Ananthakumar*, (1986) 157 ITR 598 (Mad).

Page 1845: section 64(1):

After line 6 from top, *add,—*

"It is for the assessee to produce material to bring the case within the ambit of the proviso to section 64(1)(ii). In the absence of material so produced, a conclusion may be reached that the case falls within the mischief of section 64(1)(ii) [*Smt. Kamlabai Gujri v CIT*, (1986) 157 ITR 33 (MP)].

The words 'technical or professional qualifications' occurring in the first part of the proviso to section 64(1)(ii) of the Income-tax Act, 1961, do not necessarily relate to technical or professional qualifications acquired by obtaining a certificate, diploma or a degree or in any other form from a recognised body like university or an institute. That this was the intention

of the Legislature is clear from the use of the expression 'knowledge and experience' in the latter part of the proviso, as otherwise it would have been permissible for the Legislature to use the same expression as occurring in the first part of the proviso to section 64(1)(ii). A harmonious construction of the two parts of the proviso shows that if a person possesses technical or professional knowledge and the income is solely attributable to the application of such technical or professional knowledge and experience, the requirement for the application of the proviso is satisfied, although the person concerned may not possess any qualification issued by a recognised body [*Batta Kalyani v CIT*, (1985) 154 ITR 59, 62 (AP)].

In *Batta Kalyani v CIT* [(1985) 154 ITR 59 (AP)], the assessee, who ran a hardware and paint shop, employed her husband to manage the business and paid him a salary. It was found by the Tribunal that there was no evidence to prove that the income earned by the husband of the assessee was solely attributable to the application of technical or professional knowledge and experience. It was held that the salary of the husband was to be included in the hands of the assessee-wife under section 64(1)(ii).

In *CIT v D. Rajagopal* [(1985) 154 ITR 375 (Karn)], the assessee was getting salary as managing director of a firm. His wife became a partner of that firm subsequently. It was found by the Tribunal that the assessee was only a graduate and did not possess any technical or professional qualifications within the meaning of the proviso to section 64(1)(ii). It was held that the salary of the assessee was to be included in the hands of his wife who was a partner of that firm having substantial interest therein.

But, in *CIT v Sorabji Dorabji* [(1987) 65 CTR (Ker) 260], the Tribunal recorded a finding that the assessee-wife has acquired sufficient professional experience by virtue of her experience as a director for a large number of years. Such finding, being one of fact, was sufficient to hold that the salary received by the assessee-wife could not be included in the income of her husband by virtue of the provisions of section 64(1)(ii)."

Page 1846: section 64(1):

In line 2 from top, after "112 ITR 296 (Bom)", add,— "; *CIT v Smt. Nirmala Devi*, (1987) 166 ITR 253 (MP); *CIT v Smt. Nirmala Devi*, (1987) 166 ITR 258 (MP); *CIT v Smt. Sobhagwantibai* (1987) Tax LR 1108 (MP); *Balabhadra Sitaratnam v CIT*, (1987) 65 CTR (AP) 25" [holding that interest paid by the firm to minors on their capital invested was includible in the hands of the individual under section 64(1)(iii)].

Page 1847: section 64(1):

After the paragraphs titled "*Minor child*", add,—

"**More than one minor child.**—It may be that an individual has more than one minor child and each of such minor child has been admitted to the benefits of a partnership and/or is deriving income from assets transferred from their father/mother. In such a case, the income of all such

minor children is includible in the hands of the father/mother. This is so because under section 13 of the General Clauses Act, 1897, the words in singular include the plural [*Jawaharlal v CIT*, (1983) 144 ITR 620 (MP)].

In the facts of *Mohammadi Begum v CIT* [(1986) 158 ITR 662 (AP)], it was held that the share income arising to the assessee's minor children by reason of their admission to the benefits of partnership was includible in the total income of the assessee."

Page 1848: section 64(1):

At the end of the paragraph titled "*Majority attained on the last day of the accounting year—provisions of section 64(1)(iii) do not apply*", add,—

"The above proposition of law does not hold good in a case where the minors, who were admitted to the benefits of the partnership, cease to be partners during the accounting year and the firm is continued under a new partnership deed. In such a case, the share of profit of the minors determined and received at the close of the accounting year is includible in the hands of the individual-assessee under section 64(1)(iii) [*Smt. Indubai Manoharlal v CIT*; *Smt. Manibai Prahladi v CIT*, (1987) 163 ITR 750 (Karn)].".

Pages 1848-1849: section 64(1):

At the end of the paragraphs titled "*Income from transferred assets—ss. 64(1)(iv), (v) and (vi)*", add,—

"Where there is a clear finding by the Tribunal that there were no assets of the assessee-individual transferred to any of the vulnerable persons, the provisions of any of the clauses (iv), (v) and (vi) of section 64(1) cannot be invoked [*CIT v Tolaram Jalan*, (1986) 160 ITR 811 (Bom). Cf. *P. S. Gopal Raja v AgITO*, (1985) 155 ITR 434 (Ker)].".

Pages 1849-1850: section 64(1):

On the subject "*Proximate connection between income and transferred assets—how far necessary?*", reference may also be made to *CIT v K. S. Narayanan*, (1986) 159 ITR 618 (Mad), following *CIT v S. Chandappa Iyer*, (1976) 103 ITR 810 (Mad); *CIT v Shivji Ram Agarwal*, (1986) 162 ITR 793 (Raj).

Pages 1850-1851: section 64(1):

At the end of the paragraphs titled "*Legislative supersession*", add,—

"A perusal of *Explanation 3* to section 64(1) shows that its applicability is confined to clauses (iv) and (v) of section 64(1). That *Explanation 3* cannot be taken aid of for the purposes of clause (vi) of section 64(1). In that view of the matter, the provisions of *Explanation 3* does not apply to section 64(1)(vi) and share income derived by the assessee's daughter-in-law, who became a partner in a firm by investing the amount gifted by the

assessee to her, cannot be included in the assessee's total income under section 64(1)(vi) [*CIT v Shivji Ram Agarwal*, (1986) 162 ITR 793 (Raj)].”.

Page 1852: section 64(1):

Lines 12-13 from top: The decision in *CWT v Khan Saheb Dost Mohd. Alladin* [(1973) 91 ITR 179 (AP)] has been overruled in *Ghiasuddin Babu Khan v CIT: Mirza Asaf Ali Khan v CIT* [(1985) 153 ITR 707 (AP—FB)]. The Full Bench has held that where a Muslim pays a sum of money or transfers property towards the liquidation of the *Mehar* debt due by him, it is for adequate consideration within the meaning of section 64(1)(iv) and the income from such property cannot be included in his total income under the provisions of section 64(1)(iv).

Page 1853: section 64(1):

After line 4 from top, *add*,—

“Where an asset is settled on trust for the benefit of the minor child of the individual, it cannot be said that the transfer was for adequate consideration within the meaning of section 64(1) [*CIT v K. M. Sheth*, (1986) 160 ITR 814 (Bom)].”.

Page 1853: section 64(1):

At the end of the paragraph titled “*Consideration inadequate—extent of section 64(1)-inclusion, proportionate only*”, *add*,—

“In *Dr. N. Kumararao v CIT* [(1987) Tax LR 1102 (AP)], the wife of the assessee constructed a house and spent a sum of Rs. 96,502 thereon. In that cost of construction, the assessee contributed a sum of Rs. 34,500. It was held, on facts, that the income from the house property in proportion $\frac{34.5}{96.5}$ of — was includible in the assessee's income as the same could be said to be attributable to Rs. 34, 500 out of total cost of construction of Rs. 96,502.”.

Page 1857: section 64(1):

After serial No. (12), giving illustrative cases about applicability or otherwise of the provisions of section 64(1)(iv) and/or section 64(1)(v), *add*,—

“(13) The assessee transferred by a deed of trust to his wife certain immovable property. It was held that the income derived from the property so transferred was includible in the hands of the assessee [*L. Kunhamu Haji v State of Kerala*, (1985) 155 ITR 516 (Ker)].

(14) The assessee's wife had land and income of her own. She constructed a house property. The assessee advanced certain amounts to his wife. Such amounts were repaid by the wife to the husband out of her income. It was held that the amounts advanced by the assessee were to be regarded as loans by the assessee to his wife. Therefore, the income from

such property was not assessable in the hands of the assessee [*CIT v Mrs. Hasina Begum*, (1986) 158 ITR 215 (Cal)].

(15) The income from a property standing in the name of the assessee's wife was included, in earlier years, in the total income of the assessee. There were no materials requiring fresh investigation of the matter. It was held that inclusion of income from such property in the total income of the assessee for a subsequent assessment year was justified [*K. P. Abraham v Ag. ITO*, (1987) 163 ITR 120 (Ker)].

(16) Certain property fallen to the share of a minor son of the assessee as a result of a family arrangement. It was held that there involved no transfer of property by the assessee to the minor son so as to attract the provisions of section 64(1)(v) in respect of income from such property [*CIT v R. Ponnammal*, (1987) 164 ITR 706 (Mad)].

(17) The assessee created an annual charge in favour of his wife in respect of a property. It was held that section 64(1)(iv) could not be attracted in respect of such annual charge paid to the wife out of the income of the property because for application of that section it is imperative that the assessee must have transferred the income-yielding asset to his wife and such a thing was totally absent here [*CIT v Pravin Ratilal Thakkar*, (1987) 32 Taxman 403 (Bom)].

(18) There was a Hindu undivided family consisting of the assessee-karta and minor daughters. Certain properties were allotted to the minor daughters in lieu of maintenance and expenses. It was held that it could not be said that such properties were transferred by the assessee to his minor daughters so as to attract provisions similar to section 64(1)(v) [*State of Kerala v K. P. Gopal*, (1987) 166 ITR 111 (Ker—FB)].”

Page 1860: section 64(1):

After serial No. (3), giving the illustrations of the application of section 64(1)(vii), *add*,—

“(4) The assessee settled on trust certain shares in a company for the benefit of his minor children. It was held that the dividend income arising from such shares were includible in the total income of the assessee-settlor [*CIT v K. M. Sheth*, (1986) 160 ITR 814 (Bom)].”

Page 1860: section 64(1):

On the subject “*Transfer to minor by HUF—section 64(1) has no application*”, reference may also be made to *State of Tamil Nadu v A. Sadhanandam*, (1978) 113 ITR 453 (Mad); *State of Tamil Nadu v P. Ganesa Udayar*, (1987) 63 CTR (Mad) 217.

Page 1863: section 64(1):

After line 10 of the paragraph titled “*The effect of section 64(1) vis-a-vis properties comprised in an impartible estate*”, *add*,—

“The provisions of section 27(ii) of the 1961 Act have been dealt with in *CIT v Sardar Virendra Singh Bolia* [(1982) 135 ITR 802 (MP)].”

Page 1863: section 64(1):

Lines 7-9 from top: The decision of the Patna High Court in *CIT v Maharaja Chintamani Saran Nath Sahdeo* [(1982) 133 ITR 658 (Pat)] has been held to be no longer good law in *CIT v Maharaja Chintamani Saran Nath Sah Deo* [(1986) 157 ITR 358 (Pat)], which has followed *Pratapsinhji N. Desai v CIT* [(1981) 22 CTR (Guj) 233 = (1983) 139 ITR 77 (Guj)]. Also see, *Darbar Pratapsinhji v CIT*, (1983) 139 ITR 96 (Guj); *CWT v Thakur Bhairon Singh*, (1984) 147 ITR 32 (Raj); *Bhawani Singh v CED*, (1984) 147 ITR 29 (Raj); *CIT v Maharaja Chintamani Saran Nath Sah Deo*, (1986) 160 ITR 929 (Pat); *CIT v Chintamani Saran Nath Sahdeo*, (1986) 162 ITR 255 (Pat); 'Impartible estate, whether exigible to partition', at page 3357 of Vol. 4; *Nagesh Bisto Desai v Khando Tirmal Desai*, AIR 1982 SC 887; *CIT v U. C. Mahatab*, (1983) 34 CTR (Cal) 184.

Page 1864: section 64(1):

On the subject "*Cases of cross-transfers included—section 64(1), clauses (iv), (v) and (vii)*", reference may also be made to *CIT v N. K. Pandya*, (1982) 138 ITR 360 (Bom); *CIT v M. K. Pandya*, (1982) 138 ITR 365 (Bom); *Addl. CIT v C. R. Ranganathan Chetty*, (1985) 153 ITR 456 (Mad); *Poonam Chand v CIT*, (1983) 15 Taxman 66 (MP).

Page 1864: section 64(1):

After line 5 from top, *add,—*

"The special provisions about impartible estate as contained in section 4(6) of the Wealth-tax Act, 1957, have been held operative with effect from 1st April, 1965 [*CWT v H. H. Maharaja Mayurdhwaj Singhji*, (1982) 136 ITR 279 (Bom)].".

Pages 1867-1868: section 64(2):

On the subject "*Who can blend?*", reference may also be made to *CIT v Basant Singh*, (1983) 140 ITR 937 (Punj); *Smt. R. Rajathy Ammal v CWT*, (1987) 164 ITR 605 (Mad).

Page 1868: section 64(2):

On the subject "*Individual's interest in a partnership firm—blending of*", reference may also be made to *CIT v S. Sivaprakasa Mudaliar*, (1983) 144 ITR 285 (Mad); *CIT v K. N. Narayan*, (1984) 150 ITR 103 (Karn); *CIT v P. M. Muthuramakrishnan*, (1986) 157 ITR 654 (Mad); *CIT v Rajendra P. Bhow*, (1987) 166 ITR 359 (Guj).

Page 1873: section 64(2):

On the subject "*No nucleus essential*", reference may also be made to *CIT v S. Sivaprakasa Mudaliar*, (1983) 144 ITR 285 (Mad).

Page 1873: section 64(2):

On the subject "*Whether blending amounts to a taxable gift?*", reference may also be made to *CED v Satyanarayan Babulal Chourasia*, (1983) 140 ITR 158 (Bom).

Page 1873: section 64(2):

Before line 3 from bottom, *add*,—

"The provisions of section 64(2)(b), as it stands with effect from 1st April, 1976, have been held applicable in the facts of *P. Nagalingam v CIT*, (1987) 166 ITR 845 (AP).".

Page 1889: section 67(1):

Before line 3 from bottom, *add*,—

"In *CIT v Atma Ram Budhia* [(1984) 146 ITR 240, 244 (Pat—FB)], it has been held that notwithstanding the provisions contained in section 67(1)(b), there is no bar for a partner to prove and establish that any amount apportioned to his account as salary or remuneration, etc., will not be added to the share income of the firm."

Page 1893: section 67(2):

At the end of the paragraphs titled "*Apportionment to be under separate heads of income—section 67(2)*", *add*,—

"Though the apportionment contemplated under section 67(2) of either the income or the loss of the firm should be under the various heads of income in the same manner in which the income or the loss of the firm had been determined, that section does not enable the partner to ignore the assessment made on the firm and require a fresh assessment to be made in his hands under each head of income. What is contemplated under section 67(2) is merely the apportionment of the loss or the income of the firm [*T. Manickavasagam Chettiar v CIT*, (1983) 143 ITR 269, 272-3 (Mad)].

Where a firm has income under several heads such as, business, property income, securities and other sources, the aliquot share of each partner in the firm's income will have to be reckoned in accordance with the share of that partner under the partnership instrument in each and everyone of the heads of income. The same rule applied to the allocation of loss computed in the hands of the firm. The share of loss of each partner under each head must be separately allocated to each partner. In case one or more of the partners is/are minor(s) admitted to the benefits of partnership, loss under any head cannot be allocated to such minor or minors even though there is income under another head which can wipe off such loss [*Gopikishan and Ramkishan v CIT*, (1987) 61 CTR (Mad) 232].".

Page 1894: section 67(2):

After line 6 of the paragraph titled "*Capital gains of the firm and its tax-treatment*", *add*,—

"In *T. Manickavasagam Chettiar v CIT* [(1983) 143 ITR 269 (Mad)],

the capital gains were set off against business loss in the assessment of the firm. The net loss was apportioned amongst its partners. Further, relief under section 80T was also granted to the assessee who was a partner in that firm. It was held that there was a mistake apparent from the record in granting relief under section 80T to the assessee and the same was liable to be rectified under section 154.

Reference may also be made to discussion under section 114, *post*."

Page 1894: section 67(3):

At the end of the paragraph titled "*Interest allowable on capital borrowed by the partner for investment in the firm—section 67(3)*", *add*,—

"In *CIT v Raja Vikramaditya Singh* [(1987) Taxation 85(3)-195 (MP)], the assessee was held entitled to claim deduction on account of payment of interest to the bank on the loan taken by him for investing the same in the firm wherein he was a partner. But under that section 67(3), in the absence of any share income from a partnership firm, a partner cannot claim deduction for the interest paid on the capital borrowed for investment in the partnership firm [*Prem Nazir v CIT*, (1986) 159 ITR 182 (Mad)]. Also see, *CIT v Gopal Reddy*, (1987) 34 Taxman 392 (AP).

Similarly, where there is no borrowing of money by the assessee-partner for the purpose of investing the same in the partnership business, it is not permissible, under the phraseology of section 67(3), to allow deduction in respect of the interest paid [*Smt. Rahim Khatoon v CIT*, (1987) 167 ITR 697 (AP)]."

Pages 1894-1895: section 67:

On the subject "*Each partner entitled to allowable rebate*", reference may also be made to *CIT v Bharat Auto & Metal Works*, (1985) 151 ITR 461 (Bom).

Page 1896: section 68:

After line 17 of the paragraph titled "*Section 68 analysed*", *add*,—

"Section 68 gives a statutory recognition to the principle that cash credits which are not satisfactorily explained may be assessed as income [*Nanak Chandra Laxman Das v CIT*, (1983) 140 ITR 151, 155 (All)]."

Page 1896: section 68:

At the end of the paragraph titled "*Section 68 hits also entries in own capital account*", *add*,—

"In *Banshidhar Agarwal Panna v CIT* [(1984) 148 ITR 523 (MP)], a sum of Rs. 57,251 was found credited in the capital account on 3rd April, 1972, in the books of account maintained by the assessee for the previous year 1972-73 relevant to assessment year 1973-74. The assessee's explanation to the extent of Rs. 24,400 was accepted. It was held that the balance sum of Rs. 32,851 could be treated as income for the assessment year 1973-

74 under section 68. Regarding the contention about capital build-up in earlier years, it was said that in the matter of capital build-up in earlier years, there was no specific finding in the assessment orders of the earlier years. Therefore, it could not be assumed that in making the assessments for earlier years the Income-tax Officer had accepted the growth of capital as shown in the statements annexed to the returns for earlier years. Also see, *CIT v Mansurali Valibhai Dudhani*, (1984) 148 ITR 526 (Guj).

But a credit in a bank pass book is not hit by section 68.—When moneys are deposited in a bank the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. The pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. Hence, the pass book supplied by the bank to the assessee cannot be regarded as the book of the assessee, that is, a book maintained by the assessee or under his instructions. Therefore, a cash credit for the previous year shown in the assessee's bank pass book but not shown in the cash book maintained by the assessee for that year, does not fall within the ambit of section 68 and as such the sum so credited is not chargeable to tax as the income of the assessee of that previous year [*CIT v Bhaichand H. Gandhi*, (1983) 141 ITR 67, 69 (Bom)]. It may be noted that such a credit may fall within the ambit of section 69 as an unexplained investment.”.

Pages 1897-1898: section 68:

On the subject “*Assessee to prove the source and nature of a receipt*”, after serial No. 36, *add*,—

“37. *CIT v J. J. H. Industries (P.) Ltd.*, (1983) 139 ITR 928 (Cal).

38. *CIT v S. Kamaraja Pandian*, (1984) 150 ITR 703 (Mad), special leave petition dismissed by the Supreme Court: (1985) 155 ITR (St.) 66.

39. *Addl. CIT v Hanuman Agarwal*, (1985) 151 ITR 150 (Pat) (in the facts of this case, the burden of proof was held discharged by the assessee).

40. *Addl. CIT v Mohan Engineering Co.*, (1985) 151 ITR 571 (Pat) (assessee was held entitled to take an alternative plea if the initial plea was not proved).

41. *CIT v Krishnaveni Ammal*, (1986) 158 ITR 826 (Mad).

42. *CIT v Kerala Road Lines Corporation*, (1986) 162 ITR 669 (Ker).

43. *CIT v Ishwar Dass Sharma*, (1986) 158 ITR 168 (Del).

44. *Razi Ahmad Saree Centre v CIT*, (1983) Taxation 68(1)-9 (MP).”

Pages 1900-1901: section 68:

On the subject "*Onus, when shifts from the assessee to the department?*", after serial No. 13, *add*,—

- "14. *CIT v S. Kamaraja Pandian*, (1984) 150 ITR 703 (Mad), special leave petition dismissed by the Supreme Court: (1985) 155 ITR (St.) 66.
15. *Addl. CIT v Bahri Brothers (P.) Ltd.*, (1985) 154 ITR 244 (Pat)."

Page 1901: section 68:

At the end of the page, *add*,—

"Apparent is not the real—burden of proof on the department.—In *Bedi & Co. Pr. Ltd. v CIT* [(1983) 144 ITR 352 (Karn), special leave petition granted by the Supreme Court: (1983) 142 ITR (St.) 6], an amount over Rs. 32 lakhs was shown by the assessee as a loan from a Canadian company. Such loan was evidenced by an agreement. The department treated the same as commission paid by the Canadian company to the assessee. It was held that the burden of showing that the apparent state of affairs was not the real one was very heavy on the department. In the facts of the instant case, apart from circumstances which by themselves could be said to be neutral, there was no other material to doubt the nature of the transaction and to hold that it was income. Every loan granted without security or in regard to which no repayment has been made cannot automatically be termed as a payment either towards commission or as a receipt from business. Without tangible material to suspect that the receipt was by way of commission and without recording such a finding, the conclusion of the Tribunal that the amount was assessable as income was wholly untenable.

Where it is contended on behalf of the revenue that an amount kept in fixed deposit in the name of the son of a partner of a firm really belonged to the assessee-firm, the burden will be on the revenue to establish that. Some nexus has to be established between the fixed deposit and the firm [*Sukhdayal Rambilas v CIT*, (1982) 136 ITR 414 (Bom)].

Page 1902: section 68:

At the end of paragraph titled "*Explanation offered by the assessee—how to be dealt with?*", *add*,—

"An explanation offered by an assessee in relation to a cash credit entry in his books of account can be rejected by the Income-tax Officer on cogent grounds. When such grounds are themselves based on no evidence, the question of raising a presumption against the assessee does not arise [*Sona Electric Co. v CIT*, (1985) 152 ITR 507 (Del)]."

Page 1903: section 68:

After line 11 from top, *add*,—

"**Explanation partially accepted, effect of.**—If an explanation is offered by an assessee regarding a cash credit entry and the same is rejected in

toto, the amount of such cash credit entry may be treated as income of the year in which such entry appears. However where the explanation is partially accepted to the extent that such entry relates to income earned in earlier year, such entry cannot be taxed in the year of entry but has to be taxed as income of the earlier year [*CIT v Om Prakash Mahajan & Sons*, (1985) 152 ITR 583 (Del)].”.

Page 1904: section 68:

After line 7 from top, *add*,—

“Effect of non-production of documentary evidence of corroborative value.—When the only piece of evidence available in a particular case is the statement of the assessee, any judicial authority can accept the same and order assessment on such sole evidence. But when, even according to the assessee, there is other documentary evidence of corroborative value and the same is within the reach of the assessee, the judicial body cannot act on the interested testimony of the assessee alone. The law of evidence mandates that if the best evidence is not placed before the court, an adverse inference can be drawn as against the person who ought to have produced it [*CIT v Krishnaveni Ammal*, (1986) 158 ITR 826, 829, 830 (Mad)].”.

Page 1906: section 68:

Before line 11 from bottom, *add*,—

“In *CIT v Tyaryamal Balchand* [(1987) 165 ITR 453 (Raj)], additions were made in the trading results. Further, amount representing cash credits were also added as income from undisclosed sources. The Tribunal found that the additions in trading results would cover the amount of cash credits as also substantial additions had been made in earlier years. It was held that the Tribunal was justified in deleting the addition on account of cash credits.

Similarly, in the facts of *CIT v K. S. M. Guruswamy Nadar & Sons* [(1984) 149 ITR 127 (Mad)], it was held that two additions, one towards suppressed book profits and the other towards bogus cash credit, should be telescoped and covered into one addition.”.

Page 1908: section 68:

In line 10 from top, after “118 ITR 741 (All)”, *add*,— “; *CIT v Anupam Udyog*, (1983) 142 ITR 133 (Pat)” [holding that unexplained cash credit in the name of a partner on the first day of the accounting year could be treated as income of the firm].

However, it has been held by the Allahabad High Court, in *CIT v Jaiswal Motor Finance* [(1983) 141 ITR 706 (All)], that if there are cash credit entries in the books of a firm, in which the accounts of the individual partners exist, and it is found as a fact that the cash was received by the firm from its partners, then, in the absence of any material to indicate that these were the profits of the firm, it could not be assessed in the hands of

the firm. This is so because in such a case the onus placed on the assessee-firm by section 68 should be deemed to have been discharged by it.

Where certain deposits are found in the books of the firm in the names of its partners and such deposits are treated as income of the respective partners, it is not open to treat again such deposits as income of the firm [*Addl. CIT v Precision Metal Works*, (1985) 156 ITR 693 (Del)].”.

Page 1912: section 68:

After line 5 from top, *add*,—

“Other illustrative cases.—In the facts of the following cases, the cash credits, etc., whole or part, were held to be income of the assessee:—

- (1) *Dr. Surmukh Singh Uppal v CIT*, (1983) 144 ITR 200 (Punj).
- (2) *CIT v Asok Textiles (P.) Ltd.*, (1985) 154 ITR 838 (Ker) [cash credits from *hundi*-bankers found in the books of account maintained by the assessee].
- (3) *Vimalchand Bhimsen v CIT*, (1986) 159 ITR 941 (MP) [cash credits found in the books of account of the assessee in the form of telegraphic transfers].
- (4) *Sethi Pen Stores v CIT*, (1987) 164 ITR 73 (Cal) [extra amount introduced in books *de hors* the settled figure as per settlement for such introduction].
- (5) *CIT v Chandravilas Hotel*, (1987) 164 ITR 102 (Guj) [amount claimed to be paid by way of commission though there was no evidence to support such claim—amount was held to be treated as income of the assessee].”.

Page 1915: section 68:

At the end of the page, *add*,—

“(19) *Guru Prasad v CIT: Chhattu Ram v CIT: Chhattu Ram Horil Ram (P.) Ltd. v CIT*, (1986) 158 ITR 276 (Pat): The value of the High denomination notes was assessed as income from business. The Tribunal took the view that the same was assessable as income from other sources. Rectification done by withdrawing the deduction of excess profits tax and business profits tax liabilities allowed earlier was held valid.”.

Pages 1916-1917: section 68:

On the subject “*Duty of ITO to enforce attendance of witnesses*”, reference may also be made to *Dr. Surmukh Singh Uppal v CIT*, (1983) 144 ITR 200 (Punj); *Jhaverbhai Bihari Lal & Co. v CIT*, (1985) 154 ITR 591 (Pat); *CIT v Ishwar Dass Sharma*, (1986) 158 ITR 168 (Del).

Page 1917: section 68:

In last two lines of the paragraph titled “*Cash credit on the first day of the accounting year*”, after “102 ITR 779, 783 (Pat)”, *add*,— “; *CIT v Anupam Udyog*, (1983) 142 ITR 133 (Pat); *Banshidhar Agarwal Panna v CIT*, (1984) 148 ITR 523 (MP)”.

Pages 1918-1920: section 68:

On the subject "*Intangible addition to be treated as real income*", reference may be made to *Addl. CIT v Dharamdas Agarwal*, (1983) 144 ITR 143 (MP); *Import Export Sales Corporation v CIT*, (1984) 149 ITR 318 (Del); *CIT v Jawanmal Gemaji Gandhi*, (1985) 151 ITR 353 (Bom); *CIT v M. A. Unnerikutty*, (1985) 154 ITR 844 (Ker); *CIT v Thakur Ram Ganga Prasad (P.) Ltd.*, (1986) 158 ITR 409 (Pat); *CIT v Durga Prasad Rajaram Aratiya*, (1986) 160 ITR 328 (MP); *CIT v Jhaverbhai Biharilal & Co.*, (1986) 160 ITR 634 (Pat); *CIT v Tyaryamal Balchand*, (1987) 165 ITR 453 (Raj); *CIT v K. R. Pictures*, (1984) 38 CTR (Mad) 101; *CIT v Gun Nidhi Dalmia*, (1987) 168 ITR 282 (Del).

In the facts of *Addl. CIT v Ghasiram Phoolchand* [(1987) 167 ITR 243 (Bom)], it has been held that the Tribunal was not justified in setting off fictitious losses disallowed by the Income-tax Officer against the unexplained cash credits.

Page 1922: section 68:

At the end of line 6 from top, *add*,— "Thus, the provisions of section 68 were held not applicable for assessment year 1958-59 even though assessment for that year was reopened under section 147 in view of the specific provisions of section 297(2)(d)(ii) [*CIT v Bihar Cotton Mills Ltd.*, (1986) 160 ITR 275 (Pat)]. Also see, *CIT v Hari Prasad Chaudhury*, (1984) 147 ITR 791 (Pat); *CIT v Kashiram Agrawalla*, (1984) 147 ITR 797 (Pat); *CIT v Ambaji Traders Pvt. Ltd.*, (1984) 148 ITR 401 (Bom); *CIT v R. Dalmia*, (1986) 157 ITR 221 (Del).".

Page 1922: section 68:

At the end of line 9 from top, *add*,— "Similarly, an unexplained cash credit appearing in the books of account of the assessee maintained for the previous year ending on 31st December, 1961, has been held to be assessable for assessment year 1962-63 [*CIT v Orissa Steel Corporation Pvt. Ltd.*, (1983) 144 ITR 662 (Cal)].".

Page 1922: section 68:

On the subject "*Voluntary disclosure cannot be availed for third party benefit*", reference may also be made to *ITO v Rattan Lal*, (1984) 145 ITR 183 (SC), reversing *Rattan Lal v ITO*, (1975) 98 ITR 681 (Del); *Radheshyam Tibrewal v CIT*, (1984) 145 ITR 186 (SC), affirming *Radheshyam Tibrewal v CIT*, (1980) 125 ITR 393 (Gauh); *Addl. CIT v Popular Jewellers*, (1984) 149 ITR 666 (Del); *CIT v Vishwa Nath Arora & Co.*, (1985) 151 ITR 751 (Del); *CIT v Om Prakash Mahajan & Sons*, (1985) 152 ITR 583 (Del); *CIT v Salig Ram Prem Nath*, (1985) 153 ITR 234 (Punj); *CIT v Meera & Co.*, (1986) 161 ITR 31 (Punj). Also see, *CIT v Bharat Hosiery Factory*, SLP (Civil) No. 8086 of 1981: (1983) 144 ITR (St.) 51 (SC); *CIT v Raghubir Singh Anokh Singh*, SLP (Civil) No. 9480 of 1978: (1986) 159 ITR (St.) 109 (SC).

In view of the above Supreme Court rulings, the view taken in *CIT v Sat Prakash Agarwal* [(1983) 140 ITR 880 (Del)] is no more good law on the point.

In *CIT v Ram Prasad Ram Bhagat* [(1987) 163 ITR 202 (Pat)], certain cash credits existed in the books of the assessee-HUF in the names of two ladies. These ladies made disclosure of such deposits and the same was accepted by the department. The ladies filed affidavits deposing that the deposits represented their personal property. The Tribunal was held justified in treating these deposits as genuine and, therefore, not liable to be treated as income of the assessee-HUF.

In *Baldeo Prasad v CIT* [(1986) Taxation 81(3)-394 (Pat)], the addition of the alleged voluntarily disclosed amount was sustained as the disclosure was not accepted by the Commissioner.

Page 1922: section 68:

Before line 3 (except footnote) from bottom, *add*,—

“Effect of Voluntary Disclosure of income.—Under the Voluntary Disclosure Scheme, the Commissioner is not required to make an enquiry into the correctness or otherwise of the voluntary disclosure made by an assessee. All that the Commissioner does is to receive the voluntary disclosure, accept the tax payment made and leave it to the assessee to claim all consequential benefits flowing from such voluntary disclosure. It is, therefore, necessary that the assessee should establish the nexus between the voluntary disclosure and the assessment proceedings before the tax authorities. Unless this burden is discharged, it cannot be said that the mere filing of voluntary disclosure automatically absolves the assessee from discharging the obligation that is otherwise cast on him to point out by some evidence the nexus between the voluntary disclosure and the matter under enquiry before the assessing authorities [*Radio Instruments Associates (P.) Ltd. v CIT*, (1987) 166 ITR 718, 722 (AP)]. In that case, there was a suspense account in the books of account of the assessee for the accounting year 1972-73, wherein credits totalling to Rs. 1,02,000 were made from time to time. During the pendency of assessment proceedings for assessment year 1973-74, the assessee made a voluntary disclosure of Rs. 7,000 for the year. The Income-tax Officer made an addition of Rs. 1,02,000. It was held that in the declaration of voluntary disclosure the assessee had merely stated that the disclosed amount was referable to the unaccounted sales of Rs. 1,02,000 found credited in the suspense account. The assessee has not established any connecting link between the sums periodically credited in the suspense account and the alleged unaccounted sales. In these circumstances, the Tribunal was justified in upholding the assessment of Rs. 1,02,000 as income from undisclosed sources under section 68.

Other cases on voluntary disclosure scheme.—In the context of the interpretation of the provisions of the Voluntary Disclosure of Income and Wealth Act, 1976 (8 of 1976), reference may also be made to—

(1) *Laherchand Dhanji v Union of India*, (1982) 135 ITR 685 (Bom). [Commissioner has no power to review an order or to rectify a mistake—Commissioner has no power to cancel a certificate already granted or to restrain the assessee from using the same as an evidence in any proceedings].

(2) *Collector of Central Excise v R. Seshammal*, (1983) 144 ITR 509 (Mad), affirming *R. Seshammal v CIT*, (1981) 130 ITR 81 (Mad) [gold and gold ornaments were seized in the course of search under section 132 of the 1961 Act—no proceeding pending under the Gold (Control) Act, 1968—voluntary disclosure made under Act 8 of 1976 and tax paid—assessee held entitled to return of gold and gold ornaments subject to payment of tax liabilities, etc.].

(3) *V. N. Swaminathan v CIT*, (1984) 150 ITR 375 (Mad) [the petitioner was held not entitled to immunity unless he paid the interest under section 15(5A) of Act 8 of 1976].

(4) *D. M. Chinnappaiah Setty v CIT*, (1985) 154 ITR 318 (Karn) [an assessee making declaration under section 14 of Act 8 of 1976 does not get the immunity of section 8 of that Act].

(5) *CIT v Jangi Lal*, (1986) 157 ITR 119 (All) [acceptance of disclosure under Act 8 of 1976 in the assessment order—assessee entitled to immunity from imposition of penalty—there is no need for acceptance of disclosure by a specific order].

(6) *M. K. Srikanta Setty v CIT*, (1986) 160 ITR 517 (Karn) [declaration about disclosure under Act 8 of 1976 must reach the Commissioner within the specified date where it is forwarded by post—delay cannot be condoned if the declaration sent by post reaches the Commissioner after the expiry of the specified date].

(7) *CIT v Bharatia Steel Engineering Co. (P.) Ltd.*, (1986) 162 ITR 20 (Cal) [nothing contained in a declaration of disclosure made under section 24 of the Finance (No. 2) Act, 1965, is admissible against the declarant for the purpose of any assessment proceedings].

(8) *Khandelwal Oil Industries v CIT*, (1987) 163 ITR 835 (MP).

(9) *Abdul Qadar Adam v WTO*, (1987) Taxation 85(3) 92 (Karn) [any information disclosed in a declaration made under Act 8 of 1976 could not be made use of to reopen assessment of an earlier year].”

Page 1925: section 68:

After serial No. (23), giving illustrative cases of questions of fact, *add*,—

“(24) Whether the amount added represented undisclosed income [*Haryana Iron & Steel Rolling Mills v CIT*, (1983) 142 ITR 373 (Punj)]. Also see, *Jai Chand Kanji & Co. v CIT*, (1986) 157 ITR 451 (Raj).

(25) The finding that the cash credit had not been proved to be genuine is one of fact [*Ramsing & Co. v CIT*, (1984) 146 ITR 166 (MP)]. Also see, *H. N. Lakhani v CIT*, (1984) 147 ITR 552 (Bom); *Champalal Hiralal v CIT*, (1983) Taxation 68(1)-32 (MP).

- (26) The finding that the creditor could not have advanced the amount in question [*Sardar Diwan Singh Kohli v CIT*, (1985) 153 ITR 638 (All)]. Also see, *M. L. Gupta v CIT*, (1987) 163 ITR 155 (Raj); *Pratap Narain Jaiswal v CIT*, (1987) 163 ITR 604 (All).
- (27) The finding treating the cash credit as genuine is one of fact [*CIT v Ishwar Dass Sharma*, (1986) 158 ITR 168 (Del)]. Also see, *CIT v Bhattacharjee & Co.*, (1987) 164 ITR 89 (Cal); *CIT v Didar Singh*, (1985) 44 CTR (Del) 377.
- (28) Tribunal's finding that the assessee had discharged onus is one of fact [*CIT v Orissa Corporation P. Ltd.*, (1986) 159 ITR 78 (SC)]. Also see, *CIT v Lohaty Bros. (P.) Ltd.*, (1987) 164 ITR 730 (Cal); *CIT v Amritsur Transport Co. (P.) Ltd.*, (1986) 24 Taxman 692 (Punj).

Also see, *I. S. Kapoor v CIT*, SLP (Civil) No. 4718 of 1982: (1982) 138 ITR (St.) 1 (SC); *Mausa Ram & Sons v CIT*, SLP (Civil) No. 1975 of 1982: (1983) 141 ITR (St.) 41 (SC); *Malti Prasad v CIT*, (1985) Taxation 77(1)-33 (All).".

Page 1925: section 68:

At the end of the paragraphs titled "*Tribunal's finding—when can be disturbed?*", add,—

"Unless a finding of fact is specifically challenged by the assessee and a question is raised and referred incorporating such challenge, the High Court will not *suo motu* go into the validity of the finding of fact [*Smt. Shanti Devi Jalan v CIT*, (1983) 139 ITR 288 (Cal)].".

Pages 1925-1926: section 68:

At the end of the paragraph titled "*Duty of the Tribunal*", add,—

"In *Bomin P. Ltd. v CIT* [(1986) 160 ITR 477 (Guj)], it was held that as the Tribunal had failed to consider every fact for and against the assessee with care, the finding of the Tribunal that the amount was assessable under section 68 was vitiated.

In the facts of *Jeypore Timber & Veneer Mills (P.) Ltd. v CIT* [(1982) 137 ITR 415 (Gauh)], the Tribunal was held justified in remanding the case to the Appellate Assistant Commissioner with the observations that, in the absence of verification or enquiry, it is not possible for the Tribunal to hold whether the cash credits were genuine or spurious.

But, in the facts of *CIT v Durga Prasad Rajaram Aratiya* [(1986) 160 ITR 328 (MP)], the Tribunal was held not justified in directing the Income-tax Officer to re-examine the matter."

Page 1926: section 68:

On the subject "*Questions of law*" reference may also be made to *Shiv Parkash v CIT*, (1983) 139 ITR 844 (J & K); *Gem Palace v CIT*, (1987) Taxation 84(3)-357 (Raj); *Nirmaldas Jassumal v CIT*, (1987) Taxation 86(3)-194 (MP).

The Tribunal's failure to consider the identity and creditworthiness of creditors did give rise to question of law [*CIT v Biju Patnaik*, (1986) 160 ITR 674 (SC)].

Page 1933: section 69:

At the end of the paragraph titled "*Section 68 vis-a-vis section 69*", *add,—*

"A perusal of sections 68 and 69 will show that section 68 applies when the sum in respect of which the explanation is not accepted is found credited in the books of account. In such a situation, the sum so credited is charged to income-tax as the income of the assessee of that previous year in which it is found credited in the books of account. Section 69 applies to unexplained investments which are not recorded in the books of account [*Banshidhar Agarwal Panna v CIT*, (1984) 148 ITR 523, 525 (MP)]."

Page 1933: section 69:

At the end of the paragraph titled "*Unexplained stock-in-trade not covered*", *add,—*

"But, in *Ramanlal Kacharulal Tejmal v CIT* [(1984) 146 ITR 368 (Bom)], a contrary view has been taken. In that case, it was found by the Income-tax Officer that the overdraft account of the assessee with a bank showed that its stocks of raw material were much higher than the stocks disclosed to the income-tax authorities. The assessee explained that the excess stock belonged to a third person. Except that bare statement, there was no evidence to substantiate that statement. It was, on facts, held that the value of the excess stock was assessable as income of the assessee under section 69 as unexplained investment."

Page 1934: section 69:

After serial No. (2), giving illustrations about applicability or otherwise of section 69, *add,—*

"(3) There was a credit entry in the books of the assessee in the name of his wife. It was explained by the assessee that the credit entry represented sale proceeds of gold ornaments which were received by his wife at the time of her marriage. The assessee produced vouchers and the list of the persons who had presented gifts to his wife at the time of her marriage. It was, on facts, held that the amount of the credit entry could not be included in the income of the assessee [*Udhavdas Kewalram v CIT*, (1983) 140 ITR 392 (Bom)].

(4) Assessee could not give satisfactory explanation regarding source of amount advanced as a loan. Such amount was held assessable as unexplained investment under section 69 [*Dr. Prakash Tiwari v CIT*, (1984) 148 ITR 474 (MP)].

(5) Seizure of watches was made by the Customs authorities. The assessee confessed that such watches belonged to him. The amount utilised for purchase of such watches was held taxable as unexplained investment

under section 69 [*Udaichand Megaji v CIT*, (1984) 150 ITR 39 (Karn)].

(6) Discrepancy between stocks as pledged with the bank and as recorded in the books was not satisfactorily explained. The value of the excess stock pledged was held assessable as income of the assessee from undisclosed sources [*Jai Chand Kanji & Co. v CIT*, (1986) 157 ITR 451 (Raj)].

(7) Certain articles relating to pawn business were discovered in the course of search. The explanation of the assessee in that regard was found to be false by the Tribunal. Amount invested in pawn business was treated as income of the assessee [*Malti Prasad Ram Prasad v CIT*, (1986) 157 ITR 601 (All)].

(8) The Tribunal drew an inference that a certain amount of cotton seeds was unaccounted for. The said inference was not upheld by the High Court [*Uganda Industries Co. v CIT*, (1986) 158 ITR 567 (Guj)].

(9) It was found that a secret business was conducted, wherein the assessee has invested a certain amount. It was held that such amount was assessable as income of the assessee under section 69 [*Himmatram Laxminarain v CIT*, (1986) 161 ITR 7 (Punj)].

(10) The assessee made purchases through payments by cheques. The Income-tax Officer treated the amount of such purchases as income of the assessee on the basis of the mere statements of the sellers that they have issued bogus vouchers. It was held by the Tribunal that no addition on that score was called for. The Tribunal's view was upheld [*CIT v M. K. Bros.*, (1987) 163 ITR 249 (Guj)].

(11) Certain deposits were made in a bank by the *karta* of the assessee-HUF. The explanation that the source of such deposits was withdrawals from a bigger HUF was found to be false. There was no evidence that the *karta* had any source of income as an individual. It was held that the amount of such deposits was assessable as income of the assessee-HUF [*Deo Narayan Bhadani v CIT*, (1987) 164 ITR 501 (Pat)].”

Page 1934: section 69:

Before line 10 from bottom, *add*,—

“Questions of fact.—The Tribunal's finding as to the cost of construction of a house was held to be one of fact [*Shantilal Ashok Kumar v CIT*, (1984) 38 CTR (MP) 268].

Similarly, the question whether the explanation submitted by the assessee should or should not be accepted is essentially a question of fact [*Malti Prasad v CIT*, (1985) 45 CTR (All) 89. Also see, *Radhey Shyam Jalan v CIT*, (1985) 49 CTR (All) 99].

Questions of law.—These were held to be questions of law:—

(1) Whether the assessee was entitled to set off/adjustment on account of the confiscation of the watches by the Customs authorities [*CIT v Jyoti Prashad*, (1983) 140 ITR 570 (Del), special leave petition dismissed by the Supreme Court: (1982) 137 ITR (St.) 13]?

(2) Whether there was any material or evidence before the Tribunal that at least 70 to 75 per cent. of the value of the goods pledged by the assessee with the banks was covered by the loans advanced by the banks [*CIT v Ganga Prasad Bachchulal*, (1983) 141 ITR 479 (MP)]? Also see, *CIT v Jaora Oil Mills*, (1983) 143 ITR 325 (MP).

(3) Whether property purchased in the name of an individual was actually purchased by the assessee-HUF [*Singhai Ayodhya Prasad Lakhpai Rai v CIT*, (1984) 145 ITR 547 (All)]?"

Page 1936: section 69A:

After line 2 from top, *add*,—

"The deeming part of section 69A, dealing with unexplained money, etc., comes into play only if the following two conditions are fulfilled: (1) the assessee is found to be owner of any money, bullion, jewellery or other valuable article; and (2) such money, bullion, jewellery or valuable article is not recorded in the books of account, if any maintained by the assessee for any source of income [*Kantilal Chandulal & Co. v CIT*, (1982) 136 ITR 889, 892 (Cal)]. In that case, the assessee, a dealer in precious stones, was found to be in possession of precious stones, etc., in the course of search conducted by the Customs authorities. The assessee could not prove the source of such articles. It was, on facts, held that the Tribunal was justified in concluding, in the absence of any reasonable explanation, that the assessee was the owner of articles and the value of such articles were assessable as income of the assessee under section 69A.

Extent of addition depends on facts.—Nothing contained in section 69A compels either the Income-tax Officer or any of the appellate authorities to choose between the two alternatives, namely, either to assess the value of unexplained investments in whole or not to assess any portion of the value of the investment. The position, indeed, is quite otherwise. Depending on the facts and circumstances of each case, it is open to the Tribunal, as much to the Income-tax Officer, to determine how much of the value of unexplained investments can be really regarded as representing the undisclosed income of the assessee [*CIT v N. Sowbhagmull Mahavirchand*, (1983) 142 ITR 747, 754 (Mad)]. In that case, the High Court upheld the Tribunal's decision to sustain a moiety of the addition of Rs. 1,18,000 made by the Income-tax Officer, namely, Rs. 59,000."

Page 1936: section 69A:

At the end of the paragraph titled "*Clear proof necessary*", *add*,—

"The question whether the assessee can properly be regarded as the owner of the assets found with him has to be determined on the basis of the available material. Further, the onus is on the department to establish that the assessee was the real owner of the assets in possession of the assessee [see, *CIT v Lalchand Bhabutmal Jain*, (1985) 151 ITR 360 (Bom); *Addl. CIT v S. Pichaimanickam Chettiar*, (1984) 147 ITR 251 (Mad)].

It is settled that possession is evidence of ownership and the strength of the presumption of ownership arising from the fact of possession depends on the nature of property involved. This presumption is one of the strongest in case of cash found in the possession of a person since cash is one of the properties of which title is transferable by mere delivery of possession. In such a situation, unless any cogent explanation is given by the person in the possession of cash to explain his possession and show that someone else was the owner of that amount of money, it is reasonable to assume that the cash belonged to the person from whose possession it was found as its owner [*Ashok Kumar v CIT*, (1986) 160 ITR 497, 499 (MP)]."

Page 1936: section 69A:

At the end of the paragraph titled "*Appropriate year for addition*", add,—
"Under section 69A, the amount in question can be treated as the income of the financial year for which the assessee is found to be the owner of such amount [*Harlal Mannulal v CIT*, (1984) 147 ITR 11 (MP)]."

Page 1938: section 69A:

After line 2 from top, the following illustrations may also be added:

"(5) Assessee claimed a certain amount as exempt, being income from horse racing, for the assessment year 1965-66. The assessee had no evidence to prove his claim. It was held that the amount was assessable as income from undisclosed sources [*B. C. Paul v CIT*, (1982) 136 ITR 395 (Cal)].

(6) The assessee-company received loans from banks on pledge of stock. Certain items of stock were not reflected in the books of account of the assessee. It was held that onus of proving that the stock really did not belong to the assessee-company was on the assessee and not on the department. In the absence of any evidence adduced by the assessee to show that the pledged goods belonged to someone else, the Income-tax Officer was right in assessing that the goods belonged to the assessee and in making addition on that score [*CIT v Ashok Textiles (P.) Ltd.*, (1983) 141 ITR 785 (Ker), special leave petition dismissed by the Supreme Court: (1982) 138 ITR (St.) 1].

(7) Rejecting the explanation of the assessee that the amount in question represented sale proceeds of gold ornaments, the Income-tax Officer treated the said amount as income of the assessee. This was upheld by the High Court [*H. N. Lakhani v CIT*, (1984) 147 ITR 552 (Bom)].

(8) Gold bars and cash were seized by the Customs authorities. Assessee could not prove that these belonged to a third party. Inclusion of value of such articles in the total income of the assessee was upheld [*D. Mohanlal Parekh v CIT*, (1984) 148 ITR 131 (Mad)].

(9) The assessee admitted that the gold bar recovered from a bank locker in the name of himself and his wife belonged to him. The value of such gold bar was included in the income of the assessee [*Kripal Singh v CIT*, (1987) 164 ITR 144 (All)].

(10) A large number of watches were found in possession of the assessee in the course of a raid by the Excise Department. There was no evidence to prove that these watches did not belong to the assessee. It was held that the value of such watches was includible in the income of the assessee under section 69A [*Chuhadmal Takanmal v CIT*, (1987) 166 ITR 12 (MP)].

(11) The assessee was found in physical possession of gold and was arrested by Customs authorities. The Income-tax Officer made addition in regard to the value of such gold. The Tribunal accepted the assessee's explanation that he was induced, on payment of a certain sum, to carry the bag containing gold which was seized and deleted the addition. Tribunal's view was upheld [*CIT v Amratlal Chunilal Shah*, (1984) 40 CTR (Bom) 387]."

Page 1939: section 69B:

Before the paragraph titled "*Departmental circular*", add,—

"**Illustration.**—(1) The assessee pledged certain goods, showing the same in the pledged documents as synthetic sheets, with a bank for obtaining a loan. In spite of this, the assessee contended that the goods pledged were insertion sheets. The sheets in question were got released by the assessee after the Income-tax Officer started enquiries in that regard and disposed of the same without notice to the Income-tax Officer. The value of the synthetic sheets were not reflected in the books of account of the assessee. Such value was treated as income of the assessee under section 69B. The Tribunal deleted the addition by wrongly casting burden of proof on the Income-tax Officer and by omitting to take into account the relevant materials on records. It was held that the onus was on the assessee to prove that the pledged goods were not synthetic sheets and he has failed to prove that. Therefore, the Tribunal was not justified in deleting the addition. The addition was justified [*CIT v South Indian Rubber Products*, (1987) 166 ITR 687 (Ker)]."

Pages 1940-1941: section 69C:

At the end of the paragraphs titled "*Marriage, etc., expenses*", add,—

"In the facts of *Smt. Shanti Devi Jalan v CIT* [(1983) 139 ITR 288 (Cal)], the estimated addition on account of unexplained marriage expenses was upheld as the estimate was reasonable and based on sufficient materials. Also see, *L. M. Thapar v CIT*, (1984) 149 ITR 383 (Cal); *Madan Lal v CIT*, (1984) 149 ITR 533 (Del)."

In the facts of *CIT v P. S. Chelladurai* [(1984) 145 ITR 139 (Mad)], the assessee, a social worker, was held liable to tax in respect of estimated amount expended on the maintenance of himself and his family.

Also see, *M. K. Modi v CIT*, SLP (Civil) Nos. 7819 and 7829 of 1986: (1987) 164 ITR (St.) 33 (SC)."

Pages 1947-1948: section 70:

At the end of the paragraphs titled "*Subsequent amendments*", add,—

"By the Finance Act, 1987 (11 of 1987), section 70 has been amended, with effect from 1st April, 1988. The scope and effect of the amendments made by this Act in sections 70 and 72, as also of substitution of sections 71 and 74 and of insertion of new clauses (29A), (29B) and (42B) in section 2, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'New provisions relating to set-off and carry forward of long-term capital losses.—13.1 Under the existing provisions, losses from the transfer of short-term capital assets are allowed to be set-off against any capital gains, whether short-term or long-term or against income under any other head; losses arising from transfer of long-term capital assets are, however, allowed to be set-off only against long-term capital gains. The rationale of this lies in the fact that long-term capital gains are subject to lower incidence of tax. The long-term capital losses can be carried forward separately for four years. In case of short-term capital loss, the carry forward is allowed for 8 years.

13.2 The distinction between short-term and long-term capital assets, though conforming to the principle of equity of taxation, has led to complications. To make the provisions simpler, this distinction has been done away with by insertion of sub-clauses (29A), (29B) and (42B) in section 2 of the Income-tax Act, 1961, substitution of sections 71 and 74 and amendment of sections 70 and 72. To ensure uniform treatment of capital losses and capital gains, losses arising on transfer of long-term capital assets (after they are scaled down by the same percentage of deduction as long-term capital gains) would be treated as any other losses so that they can be set-off against income under any other head in the same year and if not fully set-off may be carried forward. The distinction between the carry forward of short-term capital losses and long-term capital losses has also been removed and all capital losses would be carried forward for 8 succeeding years and set-off only against capital gains, if any, in those years.

13.3 The above amendments to sections 2, 70, 71 and 74 of the Income-tax Act shall come into force with effect from 1-4-1988 and will, accordingly, apply in relation to assessment year 1988-89 and subsequent years.

13.4 Transitory provisions with regard to carry forward of capital losses in relation to assessment year 1987-88 and earlier assessment years have been provided for in sub-section (3) of section 74. This provides that short-term capital losses computed in respect of assessment year 1987-88 or any earlier assessment year(s) shall be carried forward and set-off under the head "Capital gains" assessable for assessment year 1988-89 or any subsequent assessment year(s). If the loss is short-term capital loss and it cannot be fully set-off, it would be carried forward to the following assessment year(s). This short-term capital loss, however, would not be carried

forward for more than 8 years succeeding the assessment year in which the loss was first computed.

13.5 In respect of long-term capital loss relating to the period prior to the date of coming into effect of the new section 74, this would be carried forward and set-off against income under the head "Capital gains" assessable for that assessment year. Carry forward would not be allowed beyond the fourth assessment year immediately succeeding the assessment year for which the loss was first computed.'".

Page 1948: section 70:

After line 14 from top, *add*,—

"In the facts of *CIT v B. D. Goenka* [(1984) 38 CTR (Mad) 57], the assessee was held entitled to claim set off of the loss arising from sale of shares as the sales of shares were real transactions."

Page 1948: section 70:

At the end of the paragraph titled "*Short-term capital loss—set off in the same year—section 70(2) (i)*", *add*,—

"However, the Calcutta High Court has taken the view, in *Punjab Produce and Trading Co. Ltd. v CIT* [(1986) 159 ITR 376, 380 (Cal)], that to construe section 70(2) (i) and section 71(3) harmoniously, it must be held that the expression 'any other capital asset' in section 70(2) (i) refers only to a short-term capital asset. With great respect to their Lordships, it is submitted that such a construction is not warranted from the phraseology of section 70(2) (i)."

Page 1949: section 70:

Before line 5 from bottom, *add*,—

"In the facts of *Royal Calcutta Turf Club v CIT* [(1983) 144 ITR 709 (Cal)], the assessee was held entitled to set off losses suffered by it in the broodmares account and in the pig account in computing its total income."

Page 1952: section 70:

At the end of the paragraph titled "*Individual's loss whether could be set off against income of spouse and/or minor child includible in individual's income?*", *add*,— "That Mysore High Court decision has been affirmed by the Supreme Court in *CIT v J. H. Gotla* [(1985) 156 ITR 323 (SC)]. Also see, *CIT v Smt. Mary Ignatius*, (1983) 141 ITR 954 (Ker)."

Pages 1953-1954: section 71:

After the paragraphs titled "*Subsequent amendments*", *add*,—

"By the Finance Act, 1987 (11 of 1987), a new section 71 has been substituted in place of the existing section 71, with effect from 1st April, 1988. For the scope and effect of the so-substituted section 71, as also of the other allied amendments, reference may be made to paragraphs 13.1 to

13.5 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6308 to 6309, *ante*.”.

Page 1954: section 71:

At the end of the paragraph titled “*Scope of section 71*”, *add*,—

“In that view of the matter, an assessee is entitled to claim set off of business loss during the relevant previous year against the income from house property for that year [*CIT v Mugneeram Bangur & Co.*, (1983) 139 ITR 414 (Cal)].

At the same time, the business loss, in its entirety, has to be set off against income for the same assessment year under any other head, leaving out the exceptions. That section does not permit the assessee to have only a part of business loss to be so set off against income from other heads and carry forward the balance [*G. Atherton & Co. v CIT*, (1987) 165 ITR 527 (Cal)].”.

Page 1955: section 71:

At the end of the paragraph titled “*Business loss to be set off only against assessable income*”, *add*,—

“The above Delhi High Court decision has been reversed by the Supreme Court in *CIT v Mahalaxmi Sugar Mills Co. Ltd.* [(1986) 160 ITR 920 (SC)] on that point. The Supreme Court has held that the business loss could be set off also against Pakistani dividend income.”.

Pages 1958-1959: section 72:

At the end of the paragraphs titled “*Subsequent amendments*”, *add*,—

“By the Finance Act, 1987 (11 of 1987), section 72(1) have been amended, with effect from 1st April, 1988. For the scope and effect of the amendment to section 72, as also of the other allied amendments, reference may be made to paragraphs 13.1 to 13.5 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6308 to 6309, *ante*.”.

Page 1962: section 72:

After line 2 from top, *add*,—

“In *CIT v Ved Parkash* [(1982) 136 ITR 238 (Punj)], the assessee-HUF, which was a partner through its *Karta* in a firm had brought forward share of loss in that firm. The *karta* ceased to be a partner and the assessee-HUF continued to run the same business under a different name. It was held that the assessee-HUF was entitled to set off the unabsorbed share of loss under section 72(1) against the profit of such continued business.”.

Page 1962: section 72:

At the end of line 9 from top, *add*,— “This decision of the Madras High Court in *CIT v A. L. Srinivasan* [(1977) 108 ITR 667 (Mad)] is no more good law in view of the Supreme Court ruling in *CIT v J. H. Gotla*

[(1985) 156 ITR 323 (SC)] holding that brought forward business loss of an individual could be set off against share income of the wife or minor child tagged with the individual's income.”.

Page 1964: section 72:

After line 9 from top, *add*,—

“In *Tube Suppliers Ltd. v CIT* [(1985) 152 ITR 694 (Mad)], the assessee sold some spare parts and finished goods remaining with it relating to collapsible tubes business, which was closed down earlier. It was held that from the mere fact of such sale it could not be said that the assessee carried on the business of collapsible tubes business during the subsequent year. Therefore, the assessee was not entitled to have the unabsorbed carried forward losses of such closed business against income from another business in the subsequent year.

In *Indian Bank Ltd. v CIT* [(1985) 152 ITR 557 (Mad)], on nationalisation of assessee's banking business, the assessee was prohibited from carrying on banking business. The assessee had unabsorbed carried forward losses relating to such banking business. It claimed set off of such unabsorbed losses against interest income from nationalisation compensation bonds. The assessee's claim was negated because the assessee did not carry on business during the year of claim.”.

Page 1970: section 72:

After serial No. (25), giving the illustrative cases on the point of 'same business' or not, *add*,—

“(26) *CIT v Shah Pratapchand Nowpaji*, (1983) 139 ITR 149 (AP): commission agency business and money-lending business held to constitute 'same business'.

(27) *Popular Kuries Ltd. v CIT*, (1986) 159 ITR 519 (Ker): banking business and business in *kuries* were held not to constitute 'same business'.

(28) *CIT v S. S. M. Ahmed Hussain*, (1987) 164 ITR 525 (Mad): two lines of business carried on by the assessee held to constitute 'single business'.”.

Page 1973: section 72:

After line 12 of the paragraph titled “*Carried forward loss, if can be set off against dividend income*”, *add*,—

“In *Brooke Bond and Co. Ltd. v CIT* [(1986) 162 ITR 373 (SC)], it has been held that carried forward business loss could not be set off against dividend income of the current accounting year unless such dividend income is of the nature of business income.”.

Page 1974: section 72:

After line 8 from top, *add*,—

“But, if the income from letting out in subsequent year is held to be income from property, the unabsorbed carried forward business loss can-

not be set off against such income from letting out [*CIT v Bengal Jute Mills Co. Ltd.*, (1987) 165 ITR 631 (Cal)].

Similarly, in the facts of *Seth Bararsi Dass Gupta v CIT* [(1987) 166 ITR 783 (SC)], unabsorbed carried forward loss in sugar business was held not eligible for set off against income from letting out of the sugar mills by the receiver pending partition.”.

Page 1974: section 72:

After the paragraph titled “*Unabsorbed depreciation—carried forward and set-off*”, *add*,—

“Unabsorbed terminal allowance—carried forward and set off.—Unlike the unabsorbed depreciation, the unabsorbed terminal allowance under section 32(1)(iii) can be carried forward and set-off as business loss under section 72(1) against business profits of subsequent years [*CIT v American Export Isbrandtsen Lines Ltd.*, (1985) 156 ITR 360 (Cal)].”.

Page 1975: section 72:

At the end of the paragraph titled “*Decision-making authority*”, *add*,—

“The principle laid down in *CIT v Manmohan Das* [(1966) 59 ITR 699 (SC)] has been applied in *Addl. CIT v Central Bank of India* [(1986) 159 ITR 756, 769 (Bom)].”.

Page 1981: section 72A:

For serial No. 5 of the Notification No. S. O. 710(E), dated 11th October, 1977, the following serial No. 5 was substituted by Notification No. S. O. 471(E), dated 2nd July, 1982:—

“5. Member (Legislation), Central Board of Direct Taxes, *Ex-officio* Additional Secretary, Department of Revenue, Ministry of Finance, Government of India.”.

For the above serial No. 5, the following serial No. 5 has been substituted by Notification No. S. O. 154(E), dated 2nd March, 1983:—

“5. Member (Revenue and Audit), Central Board of Direct Taxes, *Ex-officio* Additional Secretary, Department of Revenue, Ministry of Finance, Government of India.”.

Page 1986: section 72A:

Before the text of section 73, *add*,—

“Objective of enactment of section 72A.—From the Budget speech of the Finance Minister, the Notes on Clauses of the Finance (No. 2) Bill of 1977 and the Memorandum explaining the provisions of the said Bill it will appear clear that sickness among industrial undertakings was regarded as a matter of grave national concern inasmuch as closure of any sizable manufacturing unit in any industry entailed social costs in terms of loss of production and unemployment as also waste of valuable capital assets, and experience had shown that taking over of such sick units by Government was not always a satisfactory or economical solution; it was felt that a

more effective method would be to facilitate amalgamation of sick industrial units with sound ones by providing incentives and removing impediments in the way of such amalgamation which would not merely relieve the Government of uneconomical burden of taking over and running sick units but save the Government from social costs in terms of loss of production and unemployment. With such objective in view, in order to facilitate the merger of sick industrial units with sound ones and as and by way of offering an incentive in that behalf, section 72A was introduced in the 1961 Act, whereunder, by a deeming fiction, the accumulated loss or unabsorbed depreciation of the amalgamated company is treated to be a loss in the previous year in which the amalgamation was effected; but the amalgamated company, although a successor-in-interest, would be entitled to carry forward and set off the accumulated loss and unabsorbed depreciation of the amalgamating company only where the amalgamating company was not, immediately before such amalgamation, financially viable and the amalgamation was in public interest [*CIT v Mahindra & Mahindra Ltd.*, (1983) 144 ITR 225, 239-240 (SC)].

Essential conditions for attracting section 72A.—Section 72A of the Income-tax Act, 1961, requires two conditions to be fulfilled, namely, that the amalgamating company was not immediately, before the amalgamation, financially viable and that the amalgamation was in public interest. The financial viability of a company has to be judged having regard to its profitability, its profit and loss account, balance-sheet and other relevant factors. The Central Government in pursuance of the provisions of section 72A have issued guidelines on February 2, 1978. The said guidelines, *inter alia*, provide that the declaration under section 72A would be given if the amalgamating company employed at least 100 workmen or if the fair market value of the fixed assets (excluding land) as on the date of amalgamation was not less than Rs. 50 lakhs. However, these general criteria can be relaxed if the sick industrial unit is engaged in the manufacture of mass consumption goods, etc., or it is located in a rural or backward area, etc. [*Atlas Cycle Industries Ltd. v Union of India*, (1983) 141 ITR 168, 172-173 (Del)].

In making a declaration under section 72A(1), the Central Government has to apply his mind and consider the recommendation of the specified authority as well as other materials on record and should also give reasonable opportunity of being heard to the company filing the application under section 72A(3) [*Indian Metals and Ferro Alloys Ltd. v Specified Authority*, (1984) 149 ITR 418 (Ori)].

Financial viability—connotation of.—The expression 'financial non-viability' has not been defined in the 1961 Act but the Finance Minister's speech, the Notes on Clauses of the Bill and the Memorandum explaining the provisions thereof make it clear that the financial non-viability of an undertaking has been equated with the 'sickness' of such undertaking and

obviously in the context of its revival by a sound undertaking the sickness must be of a temporary character and not any basic or permanent sickness. An undertaking which is basically or potentially non-viable will ordinarily be incapable of revival and would face a closure; in other words, the financial non-viability spoken of by the section must refer to sickness brought about by temporary adverse financial circumstances that disables the unit to stand and work on its own. This is also made clear by the provision contained in clause (a) of sub-section (1) of section 72A which states that the financial non-viability of the amalgamating company has to be judged by reference to 'its liabilities, losses and other relevant factors'.

Moreover, since the expression is occurring in a taxing statute in the context of amalgamation of companies it will have to be understood in its popular sense, that is to say, the sense or meaning that is attributed to it by men of business, trade or commerce and by persons or institutions interested in or dealing with companies [*CIT v Mahindra & Mahindra Ltd.*, (1983) 144 ITR 225, 240 (SC)].

Specified authority—how to function?—Whenever a decision-making function was entrusted to the subjective satisfaction of a statutory functionary, there was an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. If his action or decision was perverse or was such that no reasonable body of persons, properly informed, could come to or had been arrived at by the authority misdirecting itself by adopting a wrong approach or having been influenced by irrelevant or extraneous matters the court would be justified in interfering with the decision [*CIT v Mahindra & Mahindra Ltd.*, (1983) 144 ITR 225, 237 (SC)]. In that case, the order of the specified authority was quashed as it was influenced by irrelevant and extraneous material.

Public interest—meaning of.—In the absence of any special definition of the expression 'public interest' in section 72A, one ought to adopt the usually accepted meaning of the said expression. The expressions 'public interest' and 'public purpose' are not generally capable of a precise definition and they have no rigid meaning. The meaning of these expressions ought to be taken from the colour of the statute in which they occur and the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the said purpose or interest would be in the general interest of the community as distinguished from the private interests of an individual. In other words, the same should be useful to the public. It is, however, not necessary that such a measure would be for the benefit of the whole community but it must be for a considerable number [*Duncans Agro Industries Ltd. v Secretary*, (1983) 144 ITR 94, 102 (Cal)]. In that case, the amalgamating company was manufacturing cigarettes which was not an essential mass consumption. Therefore, it was held that test of 'public interest' was not met.

Departmental circular.—The following departmental circular is relevant to section 72A:—

'Section 72A(2)(ii) of the I.T. Act, 1961—Need for certificate from specified authority in respect of adequacy of steps taken for rehabilitation or revival of the business of amalgamating Co.—Clarification regarding.—In cases where the Central Government issues under section 72A(1), a declaration that the amalgamation of a company (which was not financially viable by reason of its liabilities, losses, etc.) with another company, has been in the public interest, the accumulated losses and the unabsorbed depreciation of the amalgamating company for the year in which the amalgamation was effected and the amalgamated company is allowed to set off and carry forward such loss, etc., accordingly. Such set-off and carry forward of loss, etc., is subject to the condition under section 72A(2)(ii) that "the amalgamated company furnishes, along with its return of income for the said assessment year, a certificate from the specified authority to the effect that adequate steps have been taken by that company for the rehabilitation or revival of the business of the amalgamating company".

2. A doubt has been raised as to whether the certificate from the specified authority under section 72A(2)(ii) is required only once for the year in which the amalgamation has taken place or for every year in which the benefit under section 72A is claimed.

3. The issue has been examined and the Board have been advised that section 72A(2) of the Act provides that the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless the two conditions specified therein are fulfilled. On a perusal of the two conditions, it would appear that the certificate from the specified authority should be required not only for the year of amalgamation but also for the subsequent years. Such certificates would be necessary for all the years during which the revival scheme is implemented. The certificate will also be required for all the assessment years in which the carry forward and set-off of unabsorbed loss, of the amalgamating company is claimed by the amalgamated company. There is nothing in sub-section (2) of section 72A to indicate that the benefit of that section can be claimed only once, for the year of amalgamation.' [Circular No. 350, dated September 29, 1982.]".

Page 1988: section 73:

Before the paragraph titled "*Speculation transaction*", add,—

"Section 73 further amended.—The *Explanation* occurring at the end of section 73 has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The amendment is consequential to the omission, by that Act, of section 109."

Page 1992: section 73:

Before the paragraph titled "*Burden of proof*", add,—

“Question of fact.—The question whether loss suffered was speculative or non-speculative one is, ordinarily, a question of fact [*Basanta Mal Tilak Ram v CIT*, (1985) 154 ITR 300 (Punj)].”.

Page 1993: section 73:

After line 25 from top, *add*,—

“However, in *CIT v Nirmal Kumar & Co* [(1986) 161 ITR 413 (Cal)], loss was suffered by the assessee in speculative transactions in PDOs and brokerage income was earned in those transactions. Both these transactions were held to be inter-linked and the speculation loss was held to be eligible for set off against brokerage income.”.

Page 1995: section 74:

At the end of the paragraphs titled “*Subsequent amendments*”, *add*,—

“The Finance Act, 1986 (23 of 1986), has amended the proviso to section 74(1)(a), with effect from 1st April, 1987. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘24.1 Carry forward of long-term capital loss.—As per the proviso to section 74(1)(a) of the Income-tax Act, where the net result of the computation under the head “Capital gains” is a loss in respect of any assessment year, the net loss relating to long-term capital assets in the case of assesseees other than companies is not allowed to be carried forward unless it exceeds Rs. 5,000. Since the limit of initial deduction in respect of long-term capital gains has been raised from Rs. 5,000 to Rs. 10,000 as a consequential amendment, the limit under the proviso to section 74(1)(a) of the Income-tax Act has also been raised to Rs. 10,000.

24.2 The amendment will apply in relation to the assessment year 1987-88 and subsequent years.’.

By the Finance Act, 1987 (11 of 1987), a new section 74 has been substituted, with effect from 1st April, 1988. For the scope and effect of the so-substituted section 74, as also of the other allied amendments, reference may be made to paragraphs 13.1 to 13.5 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6308 to 6309, *ante*.”.

Page 1996: section 74:

At the end of the paragraphs titled “*Short-term capital loss*” as also “*Long-term capital loss*”, *add*,—

“The above state of law is operative up to assessment year 1987-88. For and from assessment year 1988-89, the amendments made by the Finance Act, 1987, are apposite.”.

Pages 1996-1997: section 74:

At the end of the paragraphs titled “*When loss is small—Rs. 5,000 or less—Proviso*”, *add*,—

"In the above proviso, Rs. 10,000 were substituted for Rs. 5,000, for assessment year 1987-88.

For and from assessment year 1988-89, no such provisions are operative as a result of the substitution of section 74 by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Loss under the head 'Capital gains' relating to assessment year 1961-62 or earlier years.—Loss under the head 'Capital gains' sustained by an assessee in any previous year relevant to assessment year 1961-62 or earlier years is eligible for carry forward and set off under the provisions of section 74(1)(b) against 'Capital gains' for assessment year 1962-63 onwards, notwithstanding the wording of section 80 of the 1961 Act [*CIT v Behari Lal Ram Charan Ltd.*, (1987) 166 ITR 157 (SC)]. This is so because section 80 does not apply to a loss under the head 'Capital gains' carried forward under section 24(2B) of the 1922 Act for set off under section 74(1)(b) of the 1961 Act [*Addl. CIT v Central Bank of India*, (1986) 159 ITR 756 (Bom)].".

Page 1997: section 74:

At the end of the page, *add*,—

"The above state of law is operative upto and including assessment year 1987-88."

Page 2002: section 74A:

Before the text of section 75, *add*,—

"Legislative amendments.—By the Finance Act, 1986 (23 of 1986), sub-sections (1) and (2) of section 74A have been omitted and sub-section (3) of section 74A has been amended, with effect from 1st April, 1987.

The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(xiv) Modification of the provisions relating to losses from certain specified sources falling under the head "Income from other sources".—32.1 As mentioned above, winnings from lotteries, crossword puzzles, races including horse races, card games, other games or from gambling or betting is chargeable to tax under the head "Income from other sources". Section 74A(1) provides that the losses from the aforesaid sources will be allowed to be set off only against income from the same source and the losses not so set off relating to these sources incurred during a year are not allowed to be carried forward for set off against any income of a subsequent year. Under the provisions of section 74A(3) of the Act, however, losses arising from the activity of owning or maintaining race horses for running in horse races are entitled to be carried forward and set off against the income from the source including horse races, in a subsequent year. The benefit of carry forward and set off of such losses is allowed for four assessment years next following the assessment year for which the loss was first computed. In view of the insertion of a new section 115BB in the Act levying a flat

rate of tax on winnings from lotteries, crossword puzzles, races including horse races, etc., sub-sections (1) and (2) of section 74A of the Act have been deleted. Sub-section (3) has been amended to provide that in the case of a taxpayer, being the owner of horses maintained by him for running in horse races, the amount of loss incurred in the activity of owning or maintaining such race horses in any assessment year shall not be set off against income, if any, from any other source and shall be allowed to be carried forward to the four assessment years next following the assessment year for which such loss was first computed for being set off against income, if any, from the same activity.

32.2 These amendments will apply in relation to the assessment year 1987-88 and subsequent years.'”.

Page 2002: section 75:

At the end of the paragraph titled “*Legislative amendments*”, *add*,—

“The amendment made in section 75 by the Finance Act, 1987 (11 of 1987), is consequential to the substitution, by that Act, of section 74, with effect from 1st April, 1988.”.

Page 2003: section 75:

At the end of the page, *add*,—

“The decision of the Allahabad High Court in *CIT v Mangiram Gopi Chand* [(1978) 111 ITR 807 (All)] has been **overruled** by the Supreme Court in *CIT v Shah Sadiq & Sons* [(1987) 166 ITR 102 (SC)], where it has been held that section 75(2) of the 1961 Act deals with a different scheme of carrying forward of loss in the case of a registered firm but it does not speak of any accrued right. It does not destroy, either by express words or by necessary implication, the vested right given to an assessee, *e.g.*, a registered firm, under section 24(2) of the 1922 Act. Neither clause (b) nor any other clause of section 297(2) of the 1961 Act indicates a contrary intention of the Legislature regarding any vested rights of the assessee under the 1922 Act. On the contrary, section 6(c) of the General Clauses Act, 1897, indicates that the vested rights should be preserved.

In that case, the respondent, a registered firm, had incurred speculation losses for the assessment years 1960-61 and 1961-62. For the assessment year 1962-63, it made speculation profits. It was held that the right of the respondent under section 24(2) of the 1922 Act to carry forward and set off speculation losses of the assessment years 1960-61 and 1961-62 was an accrued right and a vested right. Such a right could have been taken away expressly or by necessary implication. This had not been done either by section 75 or by section 297 of the 1961 Act. That vested right was preserved by section 6(c) of the General Clauses Act, 1897. Therefore, the respondent was entitled to set off such speculation losses against speculation profits for assessment year 1962-63.”.

Page 2006: section 77:

At the end of line 22 from top, *add*,—“In *CIT v Dharamchand Jalan* [(1983) 140 ITR 972 (Bom)], it has been held that the assessee was entitled to adjust his share of loss sustained in an unregistered firm in which he was a partner against the profits made by him in the other business carried on by him individually.”.

Page 2006: section 77:

At the end of the paragraph titled “*Legislative amendments*” *add*,—

“The amendment of section 77 by the Finance Act, 1987 (11 of 1987), is consequential to the substitution, by that Act, of section 74, with effect from 1st April, 1988.”.

Page 2007: section 77:

On the subject “*Share of loss in unregistered firms—Partner not entitled to set off, etc.*”, reference may be made to *Todi Paharmal v CIT*, (1987) 163 ITR 540 (Raj).

Page 2012: section 78(1):

After line 3 from top, *add*,—

“**Section 78(1) does not cover unabsorbed depreciation—it is confined to unabsorbed business loss only.**—The operation of the provisions of section 78(1) must be restricted to the unabsorbed business loss. The operation of that section 78(1) cannot be extended to unabsorbed depreciation. Therefore, the unabsorbed depreciation of a registered firm apportioned to a deceased partner, which could not be wholly set off in the assessment of the deceased partner, could be carried forward and set off in the assessment of the firm for subsequent years. The ban of section 78(1) does not operate in such circumstances [*CIT v Nagpur Gas and Domestic Appliances*, (1984) 147 ITR 440 (Bom)].”.

Page 2013: section 78(2):

At the end of the paragraphs titled “*Carry forward and set off of losses in case of succession—section 78(2)*”, *add*,—

“The decision in *CIT v Smt. Saroj Agarwal* [(1972) 83 ITR 875 (All)] has been reversed, on facts, by the Supreme Court in *Saroj Aggarwal v CIT* [(1985) 156 ITR 497 (SC)]. In that case, the business originally carried on by the firm was a family concern of the partners who were brothers living in the same house. The new firm was constituted with one brother's widow and the adopted son with necessary adjustment in the shares of the parties. The new partnership deed was executed within four days of the death of one brother and after the adoption of a son of other brother. It was held by the Supreme Court that in those few days, no business could possibly be carried on as they were days of mourning in the family according to the social and religious customs. Though there was no term in the original partnership deed that the heirs of a deceased partner would be

taken in as partner in the new firm, it was possible to infer from the conduct of the parties and the constitution of the firms that there was a binding obligation on the other partners to take the deceased partner's wife or heirs as partner or partners and there was a right of the deceased partner's wife or heirs to join the new firm. Though there was no formal deed for four days, there was no vacuum in the succession. The facts of the instant case stood on the same footing as the facts in *CIT v Bai Mariben* [(1960) 38 ITR 80 (Bom)]. In that view of the matter, the appellant, widow of the deceased partner, was held entitled to the set off of the deceased's share of speculation loss brought forward from earlier years against the shares of speculation profits of the appellant and her minor son for the assessment year 1962-63.

In a case decided earlier to the above Supreme Court decision and reported as *Smt. S. Parvathammal v CIT* [(1987) 163 ITR 161 (Mad)], a firm constituted by two partners was dissolved on the death of one of the partners. A new firm was constituted by the surviving partner and widow of the deceased partner. It was held that in such circumstances there was no succession by inheritance to the business of the deceased partner so as to entitle the widow of the deceased partner to carry forward and set off of loss of the deceased partner.

Inheritance—implication of.—The term 'inheritance', in section 78(2), must mean only a transmission of the assets and liabilities of one person to another by the personal law applicable to them and not in any other mode of transfer known to law. Thus, there is involved no inheritance in case of amalgamation of two companies [*Hindustan Aeronautics Ltd. v CIT*, (1984) 149 ITR 795 (Karn)].”.

Page 2015: section 79:

For lines 29-34 from top, *substitute*,—“The word ‘unless’ according to grammatical meaning is equivalent to ‘if not’ and this word followed by the disjunctive ‘or’ occurring between clauses (a) and (b) clearly on grammatical interpretation goes to show that clauses (a) and (b) are to be applied disjunctively and if either of these clauses is satisfied, the ban created by section 79 cannot apply [*CIT v Shri Subhlaxmi Mills Ltd.*, (1983) 143 ITR 863, 878 (Guj)]. In other words, conditions (a) and (b) of section 79 are cumulative in effect and unless both conditions are satisfied, the Revenue cannot deprive the assessee of the benefit of section 72 [*CIT v Saravanabhavu Mills Pvt. Ltd.*, (1983) 143 ITR 856, 862 (Mad)].”.

Page 2015: section 79:

At the end of the page, *add*,—

“Operation of section 79.—Section 79 shall operate only where the change in the shareholding has taken place in any previous year relevant to assessment year 1962-63 or any subsequent assessment year. Therefore, where the change in the shareholding has taken place in any previous year relevant to

assessment year 1961-62 or any earlier assessment year, the basic requirement of section 79 cannot be said to be satisfied [*CIT v Hindustan Export & Import Corpn. Pvt. Ltd.*, (1983) 139 ITR 691 (Bom); *CIT v Acme Thread Co. P. Ltd.*, (1983) 36 CTR (Bom) 396].”.

Page 2016: section 80:

At the end of the paragraph titled “*Legislative amendment*”, add,—

“The Taxation Laws (Amendment) Act, 1984 (67 of 1984), has amended section 80, with effect from 1st April, 1985.

The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

‘Submission of return for losses—section 80.—14.1 Under the existing provisions of section 80 of the Income-tax Act relating to submission of return for losses, no loss is allowed to be carried forward and set off under section 72(1), 73(2), 74(1) or 74A(3) unless such loss has been determined in pursuance of a return filed under section 139 of the Act.

14.2 The Amending Act has amended section 80 of the Income-tax Act to provide that such loss shall not be allowed to be carried forward and set off unless such loss is determined in pursuance of a return filed within the time allowed under section 139(1) for furnishing a voluntary return of income or within such further time as may be allowed by the Income-tax Officer.

14.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to any loss for the assessment year 1985-86 and subsequent years.’.

The amendment of section 80 by the Finance Act, 1987 (11 of 1987), is consequential to the substitution, by that Act, of section 74, with effect from 1st April, 1988.

For and from assessment year 1985-86, determination and carry forward of loss in case of belated returns not mandatory.—As a result of the amendment of section 80 by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st April, 1985, the determination and carry forward of loss in case of a belated return is not mandatory. A belated return, in this context, is a return which is not furnished within the time allowed under section 139(1) or within such further time as may be allowed by the Income-tax Officer.”.

Page 2017: section 80:

In line 18 from top, after “101 ITR 740 (Pat)”, add,—“; *Shri Pancha-ganga Sahakari Sakhar Karkhana Ltd. v CIT*, (1979) 119 ITR 590 (Bom)” [on the subject “*Determination and carry forward of losses in case of belated returns*”].

Page 2017: section 80:

The paragraph titled "*No appeal if the ITO does not determine loss on a belated return*" may be read with reference to the paragraph titled "*Belated loss return not considered by ITO—appeal lies*" at pages 4218-4219 of Vol. 5.

Page 2018: section 80:

In line 13 from bottom, after "114 ITR 687 (AP)", add,—"; *Co-operative Marketing Society Ltd. v CIT*, (1983) 143 ITR 95 (MP); *CIT v Nagpur Steel & Alloys (P.) Ltd.*, (1987) Tax LR 731 (Cal)" [holding that even under the 1961 Act the determination and carry forward of losses is mandatory in case of belated returns].

Page 2031: section 85A (Old):

For computation of average rate of tax for the purposes of section 85A, reference may be made to *Birla Bombay Pr. Ltd. v CIT*, (1980) 121 ITR 142 (Bom); *CIT v Braithwaite & Co.*, (1986) 159 ITR 772 (Bom).

Page 2041: section 80A:

At the end of the paragraph titled "*Legislative amendments*", add,—

"The amendments made in section 80A by the Finance Act, 1983 (11 of 1983), by the Finance Act, 1985 (32 of 1985), and the Finance Act, 1986 (23 of 1986), are of consequential nature."

Page 2041: section 80A:

In lines 18-19 from top, after "118 ITR 243, 259 (SC)", add,—"; *Beco Engineering Co. Ltd. v CIT*, (1984) 148 ITR 478 (Punj); *CIT v Bengal Assam Steamship Co. Ltd.*, (1985) 155 ITR 26 (Cal); *Orient Paper Mills Ltd. v CIT*, (1986) 158 ITR 695 (Cal); *G. Atherton & Co. v CIT*, (1987) 165 ITR 527 (Cal); *CIT v Madras Motor (P.) Ltd.*, (1984) 150 ITR 150 (Mad); *CIT v Mercantile Bank Ltd.*, (1987) Taxation 85(3)-258 (Bom); *CIT v Jupiter General Insurance Co.*, (1987) 63 CTR (Bom) 72" [holding that where the gross total income of an assessee is a minus figure, i.e., loss, the assessee is not entitled to deduction under Chapter VIA].

But, where there is positive income, the assessee is entitled to the deduction concerned [*Beco Engg. Co. Ltd. v CIT*, (1984) Taxation 75(1)-20 (Punj)].

Pages 2042-2043: section 80A:

At the end of the paragraph titled "*Deductions under Chapter VI-A are of quite a different type from incomes exempt under Chapter III*", add,—
"Also see, *CIT v Sundaran Clayton Ltd.*, (1983) 140 ITR 235 (Mad); *Siemens India Ltd. v ITO*, (1983) 143 ITR 120 (Bom); *CIT v J. K. Synthetics Ltd.*, (1983) 143 ITR 396 (All); *CIT v Indian Detonators Ltd.*, (1983) 143 ITR 547 (AP); *CIT v Hindustan Teleprinters Ltd.*, SLP (Civil) No. 5648 of 1981: (1983) 144 ITR (St.) 12; *CIT v Sundaram Industries*

Pr. Ltd., (1985) 151 ITR 769 (Mad); *CIT v Madras Auto Service Pr. Ltd.*, (1985) 156 ITR 828 (Mad); *CIT v Gramophone Co. of India Ltd.*, (1986) 162 ITR 725 (Cal); *CIT v Peico Electronics & Electricals*, (1987) 166 ITR 299 (Cal); *CIT v Travancore Electro Chemical Industries Ltd.*, (1987) 167 ITR 359 (Ker).”.

Page 2046: section 80AA:

At the end of the last line, *add*,—“Also see, *CIT v Echen Investment P. Ltd.*, SLP (Civil) No. 11400 of 1981: (1984) 146 ITR (St.) 184 (SC).”.

Page 2047: section 80AA:

After line 8 from top, *add*,—

“The Supreme Court decision in *Cloth Traders P. Ltd. v Addl. CIT* [(1979) 118 ITR 243 (SC)] has been overruled by a larger Bench of the Supreme Court in *Distributors (Baroda) P. Ltd. v Union of India* [(1985) 155 ITR 120 (SC)], where it has been held that so far as section 80M is concerned, the deduction required to be allowed under that provision has to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with reference to the full amount of dividend received by the assessee. Section 80AA, in its retrospective operation, is merely declaratory of the law as it always was since April 1, 1968, and no complaint can be validly made against the retrospective operation of the section on the ground that it enhances the tax burden of the assessee and, therefore, infringes the fundamental right of the assessee under article 19(1)(g) of the Constitution of India [*Distributors (Baroda) P. Ltd. v Union of India*, (1985) 155 ITR 120, 137-138, 142 (SC)]. This Supreme Court Ruling [155 ITR 120 (SC)] has been followed in *CKT v Madras Motor and General Insurance Co. Ltd.*, (1986) 159 ITR 601 (Mad); *CIT v United India Fire and General Insurance Co. Ltd.*, (1986) 161 ITR 295 (Cal); *Shekhavati Investments & General Traders Ltd. v CIT*, (1987) 167 ITR 116 (Raj); *CIT v United India Insurance Co. Ltd.*, (1987) 64 CTR (Mad) 293.

In the following cases, the provisions of section 80AA have been held applicable retrospectively for and from assessment year 1968-69:—

- (1) *Addl. CIT v Madan Mohan Lall Shri Ram P. Ltd.*, (1985) 153 ITR 134 (Del).
- (2) *CIT v All India Films Corporation Ltd.*, (1986) 159 ITR 213 (Del).
- (3) *CIT v Shri Digvijay Cement Co. Ltd.*, (1986) 159 ITR 253 (Guj).
- (4) *CIT v National Insurance Co. Ltd.*, (1986) 159 ITR 314 (Cal).
- (5) *Calcutta Discount Co. Ltd. v CIT*, (1986) 161 ITR 301 (Cal).
- (6) *CIT v Supreme Credit Corporation (P.) Ltd.*, (1986) 162 ITR 880 (Cal).

In *Pilani Investment Corporation Ltd. v CIT* [(1987) 165 ITR 138 (Cal)], it has been held that the Supreme Court in *Distributors (Baroda) (P.) Ltd. v Union of India* [(1985) 155 ITR 120 (SC)] has pronounced on the interpretation of section 80M of the 1961 Act only and not on the earlier section 85A of the 1961 Act. The Supreme Court did not pronounce whether the views expressed earlier on the earlier section 85A were incorrect. Therefore, the deduction under section 85A was allowable with reference to the gross dividend income and not net dividend income. Also see, *Addl. CIT v Madan Mohan Lall Shri Ram P. Ltd.*, (1985) 153 ITR 134 (Del).

In view of the above Supreme Court Ruling [155 ITR 120 (SC)], the following decisions are no more good law on the point:—

- (1) *CIT v Motor & General Insurance Co. Ltd.*, (1983) 140 ITR 451 (Mad).
- (2) *CIT v Bhagat Ram Charat Ram P. Ltd.*, (1986) 157 ITR 199 (Del).
- (3) *CIT v Binny & Co.*, (1986) 159 ITR 303 (Mad)."

Page 2051: section 80AB:

After serial No. 18, *add*,—

- "19. *CIT v Motor and General Insurance Co. Ltd.*, (1983) 140 ITR 451 (Mad) [ss. 85 and 85A, replaced by ss. 80K and 80M].
20. *CIT v Late Rani Meyyammai Achi*, (1984) 146 ITR 121 (Mad) [s. 80L].
21. *CIT v Jayashree Charity Trust*, (1986) 159 ITR 286 (Cal) [s. 80K].
22. *CIT v Madras Motor and General Insurance Co. Ltd.*, (1986) 159 ITR 601 (Mad) [s. 80K].
23. *Addl. CIT v Central Bank of India*, (1986) 159 ITR 756 (Bom) [ss. 85, 99 and 101, replaced by ss. 80K and 80M].
24. *Addl. CIT v Seth Vineet Virmani*, (1982) 29 CTR (Del) 230 [s. 85, repealed by s. 80K].
25. *CIT v K. S. Narayanan*, (1986) 159 ITR 618 (Mad) [s. 80K].
26. *CIT v United India Insurance Co. Ltd.*, (1987) 64 CTR (Mad) 293 [s. 80K].

But in *CIT v Escorts Ltd* [(1987) 59 CTR (Del) 284], it has been held that deduction under the then section 80-I was admissible, even for assessment years 1971-72 and 1972-73 not in respect of the whole of income derived by the assessee from the priority industry but in respect of the income computed after making the deduction provided in the Act. Similarly, in *CIT v Marketing Research Corporation* [(1987) 61 CTR (Del) 204], the deduction under section 80-O has been held to be computed, even for assessment year 1968-69, not on the basis of gross income but on the basis of net income."

Page 2051: section 80AB:

Before the text of section 80B, *add*,—

“Departmental circular.—The following departmental circular is relevant to section 80AB:—

‘Section 80MM of the Income-tax Act, 1961—Amount of deduction—Regarding.—Reference is invited to the judgment of the Supreme Court in the case of *Cloth Traders* (1979) 118 ITR 243, where it was observed that the amount of deduction under section 80MM should be worked out with reference to gross income. Section 80AB, inserted by the Finance (No. 2) Act, 1980, provides that the deduction under section 80MM should be worked out with reference to net income. Section 80AB has been made effective from 1st April, 1981, and not retrospectively. It is, therefore, clarified that the judgment of the Supreme Court applies to assessments up to and inclusive of assessment year 1980-81.’ [Circular No. 341, dated 10th May, 1982.]”.

Page 2053: section 80B(5):

At the end of the paragraphs titled “*Gross total income*”, *add*,—“[see, *Cambay Electric Supply Industrial Co. Ltd. v CIT*, (1978) 113 ITR 84 (SC); *CIT v Madras Motors (P.) Ltd.*, (1984) 150 ITR 150 (Mad); *CIT v Bengal Assam Steamship Co. Ltd.*, (1985) 155 ITR 26 (Cal); *Distributors (Baroda) P. Ltd. v Union of India*, (1985) 155 ITR 120 (SC); *CIT v Empire Jute Co. Ltd.*, (1986) 161 ITR 556 (Cal); *CIT v Escorts Ltd.*, (1987) 59 CTR (Del) 284].”.

Page 2064: section 80C:

Before the paragraph titled “*Relevant rule*”, *add*,—

“XIII. The Finance Act, 1983.—Section 80C has been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85.

The scope and effect of these amendments have been elaborated in paragraphs 38.1 to 38.5 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages xcv-xcvii of Vol. 4.

XIV. The Taxation Laws (Amendment) Act, 1984.—By this Act, section 80C(2)(g), with retrospective effect from 1st April, 1971, and section 80C(2)(h), with retrospective effect from 1st April, 1983, have been amended.

The amendments made in section 80C(2)(g) and section 80C(2)(h) clarify that the deduction under the respective section is to be allowed only in the case of such associations of persons as consists of husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, and not to associations of persons generally.

XV. The Finance Act, 1987.—This Act has substituted a new clause (h) in section 80C(2), has amended section 80C(4) and has inserted sub-sec-

tions (7) and (8) at the end of section 80C, all with effect from the 1st April, 1988.

The scope and effect of all these amendments have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Modification of the provisions relating to deduction in respect of certain payments.—29.1 With a view to providing an incentive for construction and purchase of new residential houses, the provisions of section 80C have been amended on the following lines:—

- (i) subject to overall qualifying limit of Rs. 40,000, a deduction will be allowed in respect of any payment made towards the cost of any new residential property, construction of which is completed after 31-3-1987;
- (ii) the qualifying amount in this mode of payment will be limited to an amount of Rs. 10,000;
- (iii) the payment towards cost will include:—
 - (a) any instalment or part payment made under a self-financing or any other scheme of any development authority, housing board or any authority engaged in the construction and sale of residential accommodation on ownership basis;
 - (b) any instalment or part payment of the amount due to any company or a co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him;
 - (c) any repayment of loans borrowed by taxpayer from the Government or any Bank or Life Insurance Corporation of India and certain categories of public companies co-operative societies and institutions engaged in the business of providing long-term finance for construction or purchase of houses in India;
 - (d) any repayment of loan borrowed from the employer if the employer happens to be a public company, or a public sector company as per definition newly inserted by the Finance Act, 1987 [section 2(36A)];
 - (e) stamp duty, registration fee and other expenses incurred for the purpose of the purchase of house, etc.
- (iv) the following payments, however, not qualify for deduction:—
 - (a) cost of share or initial deposit for the cost of land (except where the consideration for the purchase of house property is a composite amount and the cost of land cannot be separately ascertained) or the cost of any addition or alteration;
 - (b) any expenditure in respect of which a deduction is allowable under section 24;
- (v) if for any reason, any instalment or part payment made in advance in respect of which deduction has been claimed is

refunded, the deduction already allowed will be deemed to be the income of the assessee chargeable to tax under the head "Income from other sources" of the year in which the money was received back. In addition, no deduction would be allowed in respect of any payment made during that year;

- (vi) it is necessary for the assessee to hold the property for a minimum period of 5 years from the end of the year in which the possession was taken. In case of transfer of such property before the period of 5 years, the total amount of the deduction allowed to him under these provisions will be deemed to be the assessee's income of the year in which the property is transferred and shall be chargeable to tax under the head "Income from other sources".

29.2 This amendment comes into force with effect from 1st April, 1988, and will, accordingly, apply to assessment year 1988-89 and subsequent years.'."

Page 2064: section 80C:

At the end of the paragraph titled "*Relevant rule*", *add*,—"It may be noted that rule 11A has been omitted by the Income-tax (Ninth Amendment) Rules, 1983 [Notification No. SO 825(E), dated 18-11-1983], with effect from 1st April, 1984. This omission was consequential to the amendment of section 80C(4) by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984."

Page 2065: section 80C:

At the end of paragraph (a)(vi), *add*,—

"With effect from 2nd April, 1983 (for and from assessment year 1984-85), the National Savings Certificates (VI Issue) and the National Savings Certificates (VII Issue) have been specified as such securities by the Central Government, *vide* Notification No. GSR 111(E), dated 28-2-1983.

- (vii) (for and from assessment year 1988-89) for the purposes of purchase or construction of a residential house property as envisaged in section 80C(2)(h)(ii)."

Page 2066: section 80C:

At the end of paragraph II. (ii), *add*,—

"With effect from 2nd April, 1983 (for and from assessment year 1984-85), the National Savings Certificates (VI Issue) and the National Savings Certificates (VII Issue) have been specified as such securities by the Central Government, *vide* Notification No. GSR 111(E), dated 28-2-1983.

- (iii) (for and from assessment year 1988-89) for the purposes of purchase or construction of a residential house property as envisaged in section 80C(2)(h)(ii)."

Page 2066: section 80C:

At the end of paragraph III. (v), add,—

“With effect from 2nd April, 1983 (for and from assessment year 1984-85), the National Savings Certificates (VI Issue) and the National Savings Certificates (VII Issue) have been specified as such securities by the Central Government, *vide* Notification No. GSR 111(E), dated 28-2-1983.

- (vi) (for and from assessment year 1988-89) for the purposes of purchase or construction of a residential house property as envisaged in section 80C(2)(h)(ii).”.

Page 2067: section 80C:

For the paragraphs titled “*Maximum limits of the qualifying amount—section 80C(4)*”,—*substitute*,—

“**Maximum limits of the qualifying amount—section 80C(4).**—Section 80C (4) provides for the maximum amount qualifying for deduction under section 80C(1). Such maximum amount was, for assessment years from 1968-69 to 1983-84, as under:—

- (a) in the case of an individual being an author, playwright, artist, musician, actor, (for and from assessment year 1981-82) sportsman (including an athlete),—an amount equal to the aggregate of 40 per cent. (33½ per cent. up to assessment year 1976-77) of the income from such profession included in his gross total income and of 30 per cent. of remaining part of the gross total income or an amount of Rs. 60,000 (Rs. 25,000 for assessment years 1968-69 to 1976-77, and Rs. 50,000 for assessment years 1977-78 to 1982-83), whichever is less [see, rule 11A† of the Income-tax Rules, 1962];
- (b) in the case of any individual other than at (a) above,—30 per cent. of his gross total income or Rs. 40,000 (Rs. 15,000 for assessment years 1968-69 to 1971-72, Rs. 20,000 for assessment years 1972-73 to 1978-79, Rs. 30,000 for assessment years 1979-80 to 1982-83), whichever is less;
- (c) in the case of a Hindu undivided family,—30 per cent. of its gross total income or Rs. 40,000 (Rs. 30,000 for assessment years 1968-69 to 1982-83), whichever is less;
- (d) in the case of an association of persons or a body of individuals consisting only of husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu,—30 per cent. of its gross total income or Rs. 40,000 (Rs. 15,000 for assessment year

† Rule 11A has been omitted with effect from 1-4-1984, i.e., for and from assessment year 1984-85.

1971-72, Rs. 20,000 for assessment years 1972-73 to 1978-79, Rs. 30,000 for assessment years 1979-80 to 1982-83), whichever is less.

For and from assessment year 1984-85, such maximum amount is as under:—

- (a) in the case of an individual, being an author, playwright, artist, musician, actor or sportsman (including an athlete), Rs. 60,000;
- (b) in the case of any other individual or a HUF or a Goa AOP, Rs. 40,000.

It may be noted that for and from assessment year 1984-85 the shackles of percentage have been removed.”.

Page 2069: section 80C:

After line 6 from top, *add*,—

“For assessment years 1984-85 to 1988-89—

| | |
|-----------------------------|---|
| 100% of the first Rs. 6,000 | of the qualifying amount, subject to |
| 50% of the next Rs. 6,000 | a ceiling of Rs. 40,000 for an indi- |
| 40% of the remainder | vidual or a member of a Goa AOP or a HUF.”. |

Page 2073: section 80C:

At the end of the paragraph titled “*By the assessee*”, *add*,—

“However, the above view of the Kerala High Court has been dissented from in *CIT v V. S. Chelliah* [(1984) 147 ITR 590 (Mad)]. The Madras High Court has taken the view that the words ‘his income chargeable to tax’, in section 80C(2)(a), cannot be considered as the exclusive income of the assessee but refers to the gross total income of the assessee, including the amount that has been included in his income under section 64. In that view of the matter, it has been held that where the interest income of the wife is tagged in, under section 64(1)(iv), with the income of the husband-assessee, the assessee-husband is entitled to deduction under section 80C in respect of the premia paid on the life insurance policy of his wife out of her income included in his total income.”.

Page 2074: section 80C:

Before footnote at the end of the page, *add*,—

“III. ‘Maharashtra State Government Employees’ Group Insurance Scheme, 1982—Relief under section 80C of the Income-tax Act, 1961, to contribution made under this Scheme.—Under the Maharashtra State Government Employees’ Group Insurance Scheme, 1982, which is to be introduced w.e.f. 1st May, 1982, under the authority of the Government of Maharashtra, a compulsory insurance scheme would be started in which all existing and future officers of the State Government are required to contribute a certain amount monthly for a life cover.

2. A question has been raised whether the Government servant’s monthly contributions under the scheme would be eligible for relief under

section 80C(2)(a)(i) of the Income-tax Act, 1961. This question has been considered and it is clarified that the contributions to the Maharashtra State Government Employees' Group Insurance Scheme will be eligible for relief under section 80C of the Income-tax Act, 1961, subject to the qualifying amounts prescribed in section 80C(4) of the Income-tax Act, 1961.' [Circular No. 337, dated 4th May, 1982.]

IV. 'Deduction under section 80C on the National Savings Certificates VI and VII Issues and contribution to PPF accounts—Clarifications regarding.—Question 1: Whether income-tax exemption under section 80C can be claimed by first named person in case of joint holding of NSCs VI/VII Issues?

Answer: The deduction under section 80C can be claimed by the person who has contributed the moneys out of his income chargeable to tax. It can be claimed by the first named person in a joint holding if the first named person has so contributed the amount.

Question 2: Whether rebate of income-tax under section 80C will be available where (a) NSCs VI/VII Issues are purchased in the names of spouse and minor children; and (b) jointly by husband and wife?

Answer: The answer to question 1 will apply also here. The deduction under section 80C is to be given to the person who has purchased the NSCs out of his income chargeable to tax.

Question 3: Since the interest on 6-year NSC VI Issue is deemed to have been reinvested, whether the holder of the NSC VI Issue is entitled to claim benefit of section 80C on this reinvested interest [Rules 19 and 28 of NSC VI Issue Rules, 1981 [1983] 141 ITR (St.) 9, 52].

Answer: The amount of interest reinvested will satisfy the test of having been paid out of income chargeable to tax to get the NSC and so will be entitled to deduction under section 80C.

Question 4: Whether the *karta* of HUF can open a PPF account or buy NSCs in the name of HUF?

Answer: The opening of PPF account is the subject of the Department of Economic Affairs. Section 80C(2)(b)(i)(2), however, provides that contributions made by a HUF to the account standing in the name of a member of the family in any notified Provident Fund would be eligible for deduction in the case of the family. Further, where subscription to the National Savings Certificate in the name of any member of the HUF was to have been made out of its income chargeable to tax and the beneficial ownership in such certificates vests in the family, the family would be entitled to a deduction under section 80C with reference to such contribution.

Question 5: Whether the benefit of contributions made towards Public Provident Fund maintained in the name of spouse being deductible under section 80C is available to a husband's contribution to a wife's account and not vice versa?

Answer: The benefit under section 80C will be admissible in both cases, a husband contributing the wife's and wife contributing the husband's account. The only condition that should be satisfied is that it should come out of the contributor's income chargeable to tax.' [F. No. 178/110/83-IT (AI), dated 10th November, 1983.]

V. Special Frontier Force Group Insurance Scheme—Allowability of relief under section 80C(2)(a)(i) of the Income-tax Act, 1961.—The Cabinet Secretariate have introduced with effect from January 1, 1980, an insurance scheme called the "Special Frontier Force Group Insurance Scheme" for the welfare of employees. The objective of the scheme is to provide, at a low cost and on a wholly contributory and self-financing basis, the benefits of an insurance cover for the families of the employees in the event of their death while in service and a lump sum payment to the employees on their retirement/discharge, etc., from service.

2. A question has been raised whether the contributions made by the officers and staff towards the Special Frontier Force Group Insurance Scheme would entitle the contributors to relief under section 80C(2)(a)(i) of the Income-tax Act, 1961. It has been decided that the amount contributed by the employees of this organisation to the Special Frontier Force Group Insurance Scheme will be treated as an insurance premium and will qualify for relief subject to the condition imposed in section 80C(4) of the Income-tax Act.

The above position may be brought to the notice of all the officers working in your charge.' [Circular No. 404, dated 15th January, 1985.]

VI. 'Deduction under section 80C of the Income-tax Act, 1961, in respect of contributions made to National Savings Certificates VI & VII Issues.—Under section 80C(2)(h) of the Income-tax Act, 1961, an individual or Hindu undivided family or an association of persons or a body of individuals consisting only of husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu is entitled to a deduction in respect of any sums paid in a previous year out of his or its income chargeable to tax, as subscription to any such security of the Central Government as may be specified in the Official Gazette. National Savings Certificates VI and VII Issues have been specified as securities for the purposes of section 80C(2)(h) and the notification has come into force from April 2, 1983.

2. The following clarifications are issued in this connection:—

- (i) Whether income-tax exemption under section 80C can be claimed by first named person in case of joint holding of National Savings Certificates VI Issue/VII Issue?

The deduction under section 80C of the Income-tax Act, 1961, can be claimed by the person who has contributed the monies out of his income chargeable to tax. It can be claimed by the first

named person in a joint holding if the first named person has so contributed the amount.

- (ii) Whether rebate of income-tax under section 80C will be available where (a) National Savings Certificates VI Issue/VII Issue are purchased in the name of spouse and minor children, and (b) jointly by husband and wife?

The answer to question (i) will apply also here. The deduction under section 80C is to be given to the person who has purchased the National Savings Certificate out of his income chargeable to tax.

- (iii) Whether the interest accruing to the National Savings Certificates would be included in the hands of individual or in the case of person(s) in whose name(s) the subscription has been made?

The interest accruing on the subscription to the National Savings Certificates will be included in the hands of the person who has subscribed from his income chargeable to tax.

- (iv) Since the interest on 6-Year National Savings Certificates VI issue is deemed to have been reinvested, whether the holder of the National Savings Certificates VI Issue is entitled to claim benefit of section 80C on this reinvested interest? (rules 19 and 28 of the National Savings Certificates VI Issue Rules, 1981).

The amount of interest reinvested will satisfy the test of having been paid out of income chargeable to tax to get the National Savings Certificate and so will be entitled to deduction under section 80C.

- (v) Whether a *karta* of an HUF can buy National Savings Certificates in the name of any member of the HUF?

Where subscription to the National Savings Certificates in the name of any member of the HUF is shown by the family to have been made out of the income chargeable to tax and the beneficial ownership in such certificates vests in the family, the family would be entitled to a deduction under section 80C with reference to such contribution.

- (vi) Whether the interest accrued on the subscription would be included in the hands of the individual or in the hands of the person in whose name the subscription has been made?

The interest accrued would be included in the hands of the persons who purchased the National Savings Certificate out of their income chargeable to tax.

[Circular No. 405, dated 15th January, 1985, as corrected by circular No. 418, dated 2nd May, 1985.]”

Page 2077: section 80CC:

After the paragraph titled “*Operative from*”, add,—

“**Legislative amendments.—I. The Finance Act, 1982.**—By this Act, the qualifying amount has been raised from Rs. 10,000 to Rs. 20,000, for and from assessment year 1983-84.

II. The Finance Act, 1984.—This Act has substituted a new section 80CC(3)(c) in place of the then existing section 80CC(3)(c), with effect from 1st April, 1984. The scope and effect of such substitution have been elaborated in paragraphs 18.1 and 18.2 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at page xcvi of Vol. 4.

III. The Taxation Laws (Amendment) Act, 1984.—This Act has amended section 80CC(1)(c), with retrospective effect from 1st April, 1978, i.e., for and from assessment year 1978-79.

The above amendment clarifies that a deduction under section 80CC is to be allowed, for and from assessment year 1978-79, only in the case of such associations of persons as consists of husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, and not to associations of persons generally.

IV. The Finance Act, 1985.—The scope and effect of the amendments made by this Act in section 80CC have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Modification of provision relating to deduction in respect of investment in certain new shares.—24.1 Under the existing provisions of section 80CC of the Income-tax Act, a taxpayer subscribing to new equity shares is allowed a deduction in the computation of his taxable income of an amount equal to 50 per cent. of the amount invested by him. If the amount invested in a year exceeds Rs. 20,000, the deduction is allowed with reference to an investment of Rs. 20,000 only. The tax concession is available only in respect of subscriptions to an “eligible issue of capital”.

24.2 For the purposes of this provision, eligible issue of capital means an issue of equity shares which satisfies certain conditions. One of the conditions specified in clause (a) of sub-section (3) of section 80CC is that the issue is made by a public company with the main object of carrying on the business of—

- (i) construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule, or
- (ii) providing long-term finance for construction or purchase of houses in India for residential purposes.

24.3 The Finance Act, 1985, has modified the aforesaid clause to provide that to be regarded as an eligible issue, such issue should have been made by a public company formed and registered in India and the issue should have been wholly and exclusively for the purpose of carrying on the business referred to in item (i) or item (ii) of the preceding paragraph.

24.4 This amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’

V. The Finance Act, 1987.—By this Act, sub-sections (3)(c) and (5) of section 80CC have been amended with effect from 1st April, 1987.

The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Tax incentive for investment in certain new shares.—30.1 Under the existing provisions of section 80CC of the Income-tax Act, deduction is allowable, within limits, in respect of acquisition of certain shares offered for subscription to the public before 1st April, 1987.

30.2 With a view to provide tax incentive for investment in such shares, the concession has been extended by 3 years. Deduction will be allowable subject to the satisfaction of certain conditions in respect of investment in shares offered for subscription before 1st April, 1990. The condition in respect of holding period as mentioned in section 80CC(5) has been reduced from 5 years to 3 years.

30.3 This amendment will take effect from 1st April, 1987.’”.

Page 2079: new section 80CCA:

At the end of the page, *add*,—

‘New section 80CCA.—A new section 80CCA, relating to deduction in respect of deposits under National Savings Scheme, has been inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, i.e., for and from assessment year 1988-89. The scope and effect of the newly inserted section 80CCA have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘New provisions relating to the national savings scheme to augment savings.—31.1 The Finance Act, 1987, has inserted a new section 80CCA. Under the new provisions, deduction will be allowed to an individual, a Hindu undivided family and certain categories of associations of persons or bodies of individuals in respect of the deposits made in the National Savings Scheme†. The deduction will be restricted to 50% of the amount deposited, as does not exceed Rs. 20,000 in a previous year. In case the depositor makes any withdrawals from the amount standing to his credit in the National Savings Scheme together with the interest accrued thereon, an amount equal to 50% of the amount so withdrawn shall be deemed to be the income of the taxpayer for the previous year in which such withdrawal is made.

For the text of the National Savings Scheme Rules, 1987 [Notification No. GSR 335(E), dated 30th March, 1987], reference may be made to (1987) 167 ITR (St.) 42-44.

Interest on the deposits made under the National Savings Scheme will be taxable only in the year of withdrawal and to the extent of fifty per cent thereof. The deposits in the account will qualify for exemption under the Wealth-tax Act, alongwith other specific assets, subject to the overall limit of Rs. 5 lakhs.

31.2 This amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to assessment year 1988-89 and subsequent years.'”.

Page 2080: new section 80D:

At the beginning of the page, *add*,—

“New section 80D.—A new section 80D, relating to deduction in respect of medical insurance premium, has been inserted by the Income-tax (Amendment) Act, 1986 (26 of 1986), with effect from 1st April, 1987.

The scope and effect of the newly inserted section 80D have been elaborated in paragraph 4.3 of the departmental circular No. 464, dated 18th July, 1986, which has been reproduced at page 6117, *ante*, in connection with section 36(1)(*ib*).

The salient features of the Hospitalisation and Domiciliary Hospitalisation Benefit Policy have been reproduced at pages 113 to 119 of (1987) 166 ITR, Statute Portion.”.

Page 2081: section 80D (now omitted):

After the paragraphs titled “*Legislative amendments*”, *add*,—

“The then section 80D was omitted.—The then existing section 80D was omitted by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985. As a result of such omission, deduction in respect of medical treatment, etc., of handicapped dependants is not available for and from assessment year 1985-86.

The scope and effect of the above omission have been elaborated in paragraphs 19.1 to 19.3 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages xcvi-xcvii of Vol. 4.”.

Page 2086: section 80E:

At the end of the paragraph titled “*Legislative amendments*”, *add*,—

“By the Finance Act, 1984 (21 of 1984), s. 80E(1) has been amended, with effect from 1st April, 1984.

The scope and effect of such amendment have been elaborated in paragraphs 20.1 to 20.4 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at page xcix of Vol. 4.”.

Page 2088: section 80F (now omitted):

After the paragraph titled “*Legislative amendment*”, *add*,—

“Section 80F, now omitted.—Section 80F, relating to deduction in respect of educational expenses in certain cases, has been omitted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986.

The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Deduction in respect of educational expenses in certain cases.—25.1 Section 80F of the Income-tax Act provides for the deduction of expenses incurred by a resident, who is not a citizen of India, on the education of his dependent children outside India. The total amount of deduction allowed is Rs. 1,500 per child, subject to a maximum of Rs. 3,000. In the context of the policy of reducing tax rates and removing concession which are not considered to be necessary, this concession has been discontinued.

25.2 This amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'”.

Page 2096: section 80G:

After line 10 from top, *add,—*

“The words ‘under any other provision of this Chapter’ occurring in section 88(3) have been interpreted in *Express Newspapers Ltd. v CIT* [(1984) 148 ITR 484 (Mad)].”.

Page 2099: section 80G:

After line 22 from top, *add,—*

“XII. The Finance Act, 1983.—By this Act, a new proviso has been added to section 80G(5)(i), with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85.

The scope and effect of the newly added proviso to section 80G(5)(i) have been elaborated in paragraphs 39.1 to 39.3 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages c-ci of Vol. 4.

XIII. The Finance Act, 1985.—This Act has substituted clause (i) of section 80G(1), with effect from 1st April, 1986, and has inserted a new clause (iiic) in section 80G(2)(a), with effect from 1st April, 1985.

The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of provision relating to deduction in respect of donations to certain funds, charitable institutions, etc.—26.1 Under section 80G of the Income-tax Act, a taxpayer is entitled to a deduction in the computation of his taxable income of a sum equal to 50 per cent. of the donations made by him to certain funds and charitable institutions, or for the repair or renovation of any temple, mosque, gurdwara, church or any other place which is notified by the Central Government for this purpose to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States, donations made to the

Government or any approved local authority, institution or association to be utilised for the purpose of promoting family planning are eligible for hundred per cent. deduction. The amount of the donations qualifying for deduction under section 80G is, however, limited to ten per cent. of the gross total income of the donor, subject to a monetary limit of Rs. 5 lakhs. The aforesaid ceiling limit, however, does not apply in relation to donations made to the National Defence Fund, the Jawaharlal Nehru Memorial Fund, the Prime Minister's Drought Relief Fund, the Prime Minister's National Relief Fund and the National Children's Fund.

26.2 Under one of the amendments made by the Finance Act, 1985, to section 80G, donations to the Prime Minister's National Relief Fund will be eligible for hundred per cent. deduction. Under another amendment, donations to the Indira Gandhi Memorial Trust will be placed at par with donations to other funds of national importance and, therefore, eligible for deduction under section 80G without any ceiling on the amount of donations qualifying for deduction.

26.3 The first amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years. The second amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years. Thus, donations made to the Indira Gandhi Memorial Trust at any time during the accounting year relevant to the assessment year 1985-86, will qualify for deduction under section 80G of the Income-tax Act.

XIV. The Finance Act, 1987.—By this Act, section 80G(5)(i) has been amended, with effect from 1st April, 1988.

The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

*'Modification of the provisions relating to deduction in respect of donations to certain funds, etc.—***32.1** Under section 80G of the Income-tax Act, the taxpayer is entitled to a deduction, in computing the taxable income, of a sum equal to 50% of the donation made to certain funds, institutions, etc. The amount of deduction which qualifies for deduction is limited to 10% of the gross total income of the donor, subject to a monetary limit of Rs. 5 lakhs. With the amendment of section 80G by the Finance Act, 1987, donations to any Regimental Fund (Funds set up by the Army) or Non-Public Fund (Funds set up by the Navy and Air Force), established by the Armed Forces of the Union, for the welfare of the past and present members of such forces or their dependents, shall also qualify for deduction subject to the limits and conditions laid down in section 80G.

32.2 This amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years.'".

Page 2101: section 80G:

At the end of the page, *add*,—

“In *Addl. CIT v Reliance Motor Co. Pr. Ltd* [(1983) 143 ITR 193 (Mad)]; *CIT v Inland Agencies Pr. Ltd* [(1983) 143 ITR 195 (Mad)] and *CIT v Inland Agencies Pr. Ltd* [(1983) 143 ITR 186 (Mad)], the question arose whether the relevant clause in the trust deed expressed to be for the benefit of any particular religious community or caste as contemplated by section 80G(5)(iii). As the trust deed was not annexed to the statement of case, the matter was remanded to the Tribunal for considering the entire controversy again so far as it has got a bearing on section 80G(5)(iii).

In the facts of *CIT v Bimetal Bearing Ltd* [(1985) 152 ITR 85, 93 (Mad)], it has been held that donation to an educational institution is eligible for deduction under section 80G.

It is pertinent to note that *Explanation 3* below 80G provides that the expression ‘charitable purpose’, in section 80G, does not include any purpose the whole or substantially the whole of which is of a religious nature. In *CIT v Upper Ganges Sugar Mills Ltd* [(1985) 154 ITR 308 (Cal)], establishment of public places of worship and prayer halls has been held to be a religious purpose.”.

Page 2103: section 80G:

After line 20 from top, *add*,—

“The decision in *Hyderabad Race Club v Addl. CIT* [(1979) 120 ITR 185 (AP)] has been **dissented from** in *CIT v Canara Bank* [(1986) 162 ITR 478 (Karn)]. The Karnataka High Court has taken the view that in view of the embargo placed by section 80G(4) on the maximum deduction permissible, an assessee is not entitled to deduction on that part of the amount of donations which, upto assessment year 1977-78, exceeded Rs. 2,00,000. In that case, the assessee in all made donations amounting to Rs. 2,65,350 and claimed deduction, for assessment year 1977-78, to the extent of Rs. 1,32,675, being 50% of Rs. 2,65,350. It was held that the deduction has to be restricted to Rs. 1 lakh, being 50% of Rs. 2,00,000 which is the maximum limit with reference to which the deduction is available.”.

Page 2104: section 80G:

On the subject “*Donations in kind—whether eligible for deduction?*”, reference may, for assessment years up to 1975-76, also be made to—

(1) *CIT v Smt. Dhirajben R. Amin*, (1983) 141 ITR 875 (Guj) [donation of shares was held not eligible for deduction under section 80G as there was no finding that such donation in substance was donation in cash].

(2) *CIT v Maharaja Shri Umed Mills*, (1984) 148 ITR 72 (Raj) [amounts spent on construction of school building were held representing donations in money for charitable purposes and eligible for deduction under section 80G].

(3) *CIT v Saurashtra Cement and Chemicals Industries Ltd.*, (1987) 163 ITR 258 (Guj) [the matter was remanded to the Tribunal because

there was no finding on the question whether the donation of cement was in substance one in cash].

Page 2105: section 80G:

After line 9 from top, *add*,—

“Sections 37(1) and 80G are not mutually exclusive.—See, at page 6137, *ante*, in connection with section 37.

Question of law.—The question whether the Tribunal acted within its jurisdiction in directing the Income-tax Officer to allow the assessee deduction under section 80G for a subsequent year while dealing with an appeal relating to an earlier year, is one of law [*Jay Engineering Works Ltd. v CIT*, (1987) 167 ITR 882 (Del)].”.

Page 2109: section 80GG:

After the paragraph titled “*Legislative history*”, *add*,—

“Legislative amendments.—I. The Finance Act, 1983.—By this Act, a new proviso to section 80GG was substituted in place of the then existing proviso, with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85.

The scope and effect of the so-substituted proviso have been elaborated in paragraphs 40.1 to 40.3 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages ci-cii of Vol. 4.

II. The Finance Act, 1986.—Section 80GG has also been amended by this Act, with effect from 1st April, 1987. The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘(xv) *Modification relating to limit of deduction in respect of rent paid.*—

33.1 Under the provisions of section 80GG of the Income-tax Act, any expenditure incurred by an assessee, other than those covered under section 10(13A) of the Income-tax Act, in excess of 10 per cent. of his total income towards payment of rent is allowed as deduction in computing his total income. The amount of deduction is subject to a ceiling of Rs. 400 per month or 15 per cent. of his total income of the year whichever is less. With a view to liberalising the provisions of this section, by an amendment brought about by the Finance Act, the monetary ceiling of deduction has been raised from Rs. 400 per month to Rs. 1,000 per month. The ceiling of deduction in terms of percentage of total income has been raised from fifteen per cent. to twenty-five per cent. The lower of the two ceilings now stipulated will be admissible as deduction as at present.

33.2 The amendment will be applicable in relation to the assessment year 1987-88 and subsequent years.’

Page 2113: section 80GGA:

After the paragraph titled “*Scope extended*”, *add*,—

“Section 80GGA further amended.—Section 80GGA has further been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April,

1983. The scope and effect of the amendments have been elaborated in paragraphs 41.1 to 41.4 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages cii-ciii of Vol. 4.”

Page 2118: section 80HH:

After line 24 from top, *add*,—

“Legislative amendment.—In section 80HH, for the *Explanation* below sub-section (10), a new sub-section (11) with a proviso has been inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986; as under:—

‘(iv) *Declaration of an area as a backward area for the purposes of tax holiday.*—7.1 As per the existing provisions of section 80HH of the Income-tax Act, all categories of taxpayers are entitled to a deduction equal to 20 per cent. of the profits derived by them from new industrial undertakings or hotels in backward areas. In terms of *Explanation* to this section, “backward area” means an area specified in the list in the Eighth Schedule. This list needs frequent updating in conformity with the notifications issued by the Ministry of Industry including or excluding an area as “No Industry District” or “Special Region District”. As a result, there is a time lag between the notification made by the Ministry of Industry and the subsequent amendment to the Eighth Schedule to the Income-tax Act. In order to reduce this time lag, enabling powers have been acquired by the new sub-section (11), substituted in place of the existing *Explanation* below sub-section (10), by the Amending Act providing that “backward area” means such area as the Central Government may, having regard to the stage of development of that area, by notification in the Official Gazette, specify in this behalf. As per the proviso to this new sub-section, no notification may be issued so as to have retrospective effect to a date earlier than 1-4-1983.

7.2 The existing Eighth Schedule to the Income-tax Act incorporated by the Direct Taxes (Amendment) Act, 1974, was amended last by the Finance Act, 1976. As per their notification dated 27-4-1983, the Ministry of Industry has classified the backward areas into three categories, namely, A, B and C, for the purposes of providing Central investment subsidy, transport subsidy and other concessional finances for the period 1-4-1983 to 31-3-1986. Category ‘A’ districts, as notified from time to time, include ‘No Industry Districts’ and ‘Special Region District’ and they would normally be eligible for inclusion in the Eighth Schedule to the Income-tax Act.

7.3 This amendment has been made retrospectively to avoid hardship to the assesseees and to solve administrative problems in respect of the earlier years, namely, the assessment years 1984-85, 1985-86 and 1986-87. For the subsequent assessment years, it is intended to make corresponding changes to the notifications under the Income-tax Act shortly after the noti-

fications in this regard are issued by the Ministry of Industry. Thus, while additions to the list of notified backward areas could be made retrospective up to 1-4-1983, deletion of such areas will be done prospectively.

7.4 In view of the above amendment, the Eighth Schedule to the Income-tax Act has been omitted.

7.5 The amendments shall come into force with effect from 1st April, 1986, but as stated above the notifications to be issued under the amended section 80HH after 1-4-1986 could be given retrospective effect up to 1-4-1983 and, consequently, the assessment year affected will be the assessment year 1984-85 and onwards.'.”.

Page 2118: section 80HH:

At the end of the paragraphs titled “*Industrial undertaking, implication of*”, *add*,—

“In the facts of *CIT v Marwell Sea Foods* [(1987) 166 ITR 624 (Ker)], an industrial undertaking in a backward area engaged in processing of prawns was held eligible for deduction under section 80HH.

Derived from, implication of.—The deduction under section 80HH is to be allowed with reference to the profits and gains *derived from* an eligible industrial undertaking. The expression ‘derived from’ has a definite, but narrow meaning and it cannot receive a flexible or wider concept. If a word or expression has received judicial interpretation by the highest court or the Tribunal and thereafter it is found to have been used in the legislative enactments, it must be presumed that the legislature must have used that word or expression with the same meaning as judicially determined unless the context apparently requires any other meaning [*Sterling Foods v CIT*, (1984) 150 ITR 292, 296 (Karn)]. In that view of the matter, the assessee was held not entitled to deduction under section 80HH in respect of profits and gains derived from the sale of import entitlements.”.

Page 2120: section 80HH:

At the end of “(iv)”, *add*,—“The word ‘worker’ here shall mean and include a casual or a permanent or a temporary worker [*CIT v K. G. Yediyurappa & Co.*, (1985) 152 ITR 152 (Karn)].”.

Page 2120: section 80HH:

Before the paragraph titled “*Quantum of deduction*”, *add*,—

“Computation of profits and gains.—The deduction under section 80HH is permissible with reference to the profits and gains as computed after setting off against them earlier years’ losses, unabsorbed depreciation and unabsorbed development rebate [*CIT v Kerala Solvent Extractions Ltd.*, (1987) 165 ITR 174 (Ker)].”.

Page 2120: section 80HH:

Before the text of section 80HHA, *add*,—

“Departmental circular.—The following departmental circular is relevant to such 80HH:—

“Backward area” for the purposes of section 80HH of the 1961 Act—Problems arising from the omission of the Eighth Schedule of the Act with retrospective effect—Notification of backward areas—Certain clarifications.—By an amendment brought about by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, *Explanation* below sub-section (10) of section 80HH of the Income-tax Act, 1961, was substituted by sub-section (11) and the Eighth Schedule to the Income-tax Act, 1961, was omitted. The said *Explanation* provided that in this section “backward area” means an area specified in the list in the Eighth Schedule. The newly inserted sub-section (11) provides that for the purposes of this section, “backward area” means such area as the Central Government may, having regard to the stage of development of that area, by notification in the Official Gazette, specify in this behalf. The Schedule was omitted with effect from 1-4-1984 and it was provided that notification under sub-section (11) could be issued so as to have retrospective effect to a date not earlier than 1-4-1983. In pursuance of the new provisions of sub-section (11), a Notification No. 7056 [F. No. 178/171/86-IT(A-I)], dated 19-12-1986†, effective from 1-4-1983 was issued notifying the list of backward areas. In this notification, certain blocks/*taluks*, where investment had exceeded Rs. 30 crores as on 31-3-1983 were excluded.

2. In the interest of administrative convenience, it has been decided that the benefit of section 80HH, in respect of any area will not be withdrawn retrospectively. The Taxation Laws (Amendment and Miscellaneous Provisions) Bill, 1986, received the assent of the President on 10-9-1986. It is, therefore, clarified that notwithstanding the aforesaid notification, all areas specified in the Eighth Schedule will continue to enjoy the benefit of section 80HH in respect of an industrial undertaking which begins to manufacture or produce articles before 10-9-1986 or in respect of the business of a hotel which starts functioning before 10-9-1986.

3. It may further be clarified that the reference to the districts in the Schedule to the aforesaid notification is to the areas comprised in the respective districts as on 1-10-1970, *i.e.*, prior to their re-categorisation and, therefore, the areas carved out of these districts thereafter (except those specifically excluded within brackets) will be entitled to the benefit under this provision.

4. On account of a typographical error, the name of district ‘Jind’ has been mentioned as ‘Hind’ under column No. 3 against entry No. 5 (per-

† This has reference to Notification S.O. No. 165(E), dated 19-12-1986 [1987] 165 ITR (St.) 294].

taining to Haryana State) of the Schedule to the said notification. The area comprised in the Jind District of Haryana State will, therefore, be entitled to the benefit of this provision.' [Circular No. 484, dated 1st May, 1987.]".

Page 2126: section 80HHA:

After line 2 from top, *add*,—

"III. *By the Finance Act, 1986.*—By this Act, clause (b) of the *Explanation* below section 80HHA(8) has been substituted with retrospective effect from 1st April, 1985.

The scope and effect of such amendment have been elaborated in paragraphs 15.1 to 15.3 of the departmental circular No. 461, dated 9th July, 1986, which have been reproduced at pages 6084 to 6085, *ante*, in connection with section 32A."

Page 2128: section 80HHB:

After the paragraph titled "*Introduction*", *add*,—

"Legislative amendment.—Section 80HHB has been amended by the Income-tax (Amendment) Act, 1986 (26 of 1986), with effect from 1st April, 1987. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 464, dated 18th July, 1986, as under:—

'6. Enhancement of deduction in respect of profits and gains from projects outside India.—6.1 As per the existing provisions of section 80HHB of the Income-tax Act, where the gross total income of an Indian company or a person (other than a company) who is resident in India includes any profits or gains arising from the execution of projects outside India, a deduction from such profits or gains equal to 25% thereof is admissible. In order to encourage the activity of execution of projects outside India which is one of the sources of earning foreign exchange, section 80HHB has been amended to secure that the deduction will be admissible of an amount equal to 50% of such profits.' "

Page 2130: new section 80HHC:

Before the text of section 80-I, *add*,—

"New section 80HHC.—Section 80HHC was originally inserted by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1983, *i.e.*, for and from assessment year 1983-84. The scope and effect of the originally enacted section 80HHC have been elaborated in paragraphs 42.1 to 42.6 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages ciii-cv of Vol. 4.

Legislative amendments.—I. The Finance Act, 1985.—By this Act, a new section 80HHC was substituted in place of the originally enacted section

80HHC, with effect from 1st April, 1986. The scope and effect of the so-substituted section 80HHC have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of the provisions relating to incentive for export.—27.1 Under section 80HHC of the Income-tax Act, an assessee, being an Indian company or a person (other than a company) who is resident in India, is entitled to a deduction in the computation of the taxable income, of an amount equal to 1 per cent. of the export turnover *plus* a further amount equal to 5 per cent. of the incremental export turnover.

27.2 With a view to providing exporters with requisite resources for modernisation, technological upgradation, product development and other activities and raising their efficiency and productivity, not only in the export sector but also in the economy as a whole, the Finance Act, 1985, has substituted section 80HHC to provide that an assessee, being an Indian company or a person (other than a company) who is resident in India, who exports out of India, during the previous year, any goods or merchandise to which this section applies, will be allowed deduction of an amount, not exceeding 50 per cent. of the profits derived by the assessee from the export of such goods or merchandise. The provision of new section 80HHC(1) lays down that an amount equal to the amount of the deduction claimed should be debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee. The provisions of the new section will apply to all goods or merchandise (other than mineral oil and minerals and ores) if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange.

27.3 In a case, where the business carried on by the assessee consists exclusively of export out of India of the goods or merchandise to which the provisions of this section apply, the profits derived from the export of goods or merchandise for the purposes of the proposed concession shall be the profits of the business as computed under the head "Profits and gains of business or profession". In a case, where the business carried on by the assessee does not consist exclusively of export out of India of the goods or merchandise to which the provisions of this section apply, the profits derived from the export of the goods or merchandise shall be the amount which bears to the profits of the assessee as computed under the head "Profits and gains of business or profession" the same proportion as the amount of the export turnover bears to the total turnover of the business carried on by the assessee.

27.4 Clause (a) of the *Explanation* to section 80HHC defines the term "convertible foreign exchange" as foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange, for the purposes of the Foreign Exchange Regulation Act, 1973, and any

rules made thereunder. The definition of convertible foreign exchange is the same as contained in section 80-O of the Income-tax Act. Government have issued a Press Note on 21-6-1983 clarifying that receipt of sale proceeds in non-convertible rupees from bilateral account countries (e.g., Russian Roubles) will be treated on par with sale proceeds received in other convertible foreign exchange for the purposes of section 80HHC of the Income-tax Act.

27.5 The amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'

II. The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.—Section 80HHC has been amended by this Act, with effect from 1st April, 1987. The scope and effect of the amendments made by this Act in section 80HHC have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under:—

'(v) Liberalisation of the provisions relating to deduction in respect of the profits retained for export business.—8.1 Under the existing provisions of section 80HHC of the Income-tax Act, an assessee, being an Indian company or any other person resident in India, who exports outside India any goods or merchandise, excepting mineral oil and minerals and ores, is allowed deduction of an amount not exceeding 50 per cent. of the profits derived by him from the export of such goods or merchandise. Earlier to the assessment year 1986-87, the deduction allowed was an amount equal to one per cent. of the export turnover *plus* a further amount equal to five per cent. of the incremental export turnover. In the context of the low profitability of Indian exports, various exporters' organisations had been suggesting that a shift be made back to the deduction based on turnover on the ground that the new profit-based deduction operates harshly on exporters. A profit-based incentive is administratively simple and it awards greater efficiency. A turnover-based incentive, on the other hand, takes care of the need of those exporters who, for various reasons, do not earn profit, but contribute in a significant measure to the foreign exchange earnings with their large turnover. The system of incentive on the basis of incremental turnover encourages growth. On a consideration of these factors, the incentive provided by the Amending Act is based on profit, as also the turnover to the extent it is reflected as net foreign exchange realisation. The new sub-section (1) of section 80HHC, accordingly, provides that the deduction would be equal to the aggregate of four per cent. of the net foreign exchange realisation and fifty per cent. of the remaining export profits subject to the condition that the aggregate deduction shall not exceed the export profits. To illustrate, in a case where the total free on board value of exports is Rs. 1,000 and the aggregate of the cost, insurance and freight value of all categories of licences (to be issued by the Chief Controller of Imports and Exports) to which the assessee is entitled during the previous year either against export obligation or against exports as replenishments is

Rs. 400, the net foreign exchange realisation will be equal to Rs. 600. Assuming that the export profits in this case amount to Rs. 100, the deduction admissible as per the new provisions will be Rs. 24 (4 per cent. of the net foreign exchange realisation) *plus* Rs. 38 [150 per cent. of the remaining export profits, *i.e.*, 50 per cent. of Rs. 76 (Rs. 100–24)], *i.e.*, a total deduction of Rs. 62. As per the existing provisions, the admissible deduction in this case would be Rs. 50 only.

8.2 It would be noted from the above that the expression “net foreign exchange realisation” has been defined to mean, as per the newly inserted *Explanation* after clause (b) of the existing *Explanation*, the total free on board value of exports outside India of goods and merchandise to which this section applies as reduced by the aggregate of the cost, insurance and freight value of all categories of import licences, to be issued by the Chief Controller of Imports and Exports, Government of India, to which the assessee is entitled during the previous year, either against export obligation or against exports as replenishments. For example, the categories of such licences included as per para 276(1)(b) of the Import and Export Policy for the period April, 1985, to March, 1988, are the Imprest Advance, Special Imprest and Replenishment licences as also Import-Export Pass Books, if any, issued during the relevant year or for which an exporter is eligible during these years.

The import replenishment licence related to the free on board value of exports is issued to registered exporters to enable them to import inputs where domestic substitutes are not adequate in terms of price, quality or delivery dates. This is based on import content of the export production.

The imprest licence issued to the trading houses is issued to the extent of hundred per cent. of the value of replenishment licence earned against their own exports made during the previous year. Every imprest licence is subject to an export obligation.

The duty free advance licences are also issued *ex-ante*, *i.e.*, in anticipation of exports.

The additional licences are issued to export houses and trading houses as a proportion of the free on board value of their exports from the small scale industrial sector and as a proportion of the net foreign exchange earnings from the non-small scale industrial sector.

The Import and Export Pass Book Scheme is applicable only to registered manufacturer-exporters to provide duty-free access to imported inputs for export production. The need to apply repeatedly for advance/imprest and replenishment licences is eliminated with the issue of this pass book which serves as a single all purpose duty-free import licence. A separate pass book is issued for each export product indicating the value of items allowed for import as well as export obligation thereon. Each pass book will bear a suitable export obligation. The holder of this pass book will not be entitled for issue of any advance imprest licences for that export product admissible against its exports.

8.3 As per the new sub-section (4) inserted after sub-section (3) and before the *Explanation*, it has been provided that the deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form‡ along with the return of income, the report of an accountant as defined in the *Explanation* below section 288(2) certifying that the deduction has been correctly claimed on the basis of the amount of the net foreign exchange realisation, as determined in accordance with the import and export policy of the Government of India for the relevant period. The form of report and the certificate thereunder will be prescribed in the rules to be framed shortly.

8.4 The amendment shall come into force with effect from 1st April, 1987, and will, accordingly, apply to the assessment year 1987-88 and subsequent years.*

Relevant rule and form.—Rule 18BBA(2) of the Income-tax Rules, 1962, and Form No. 10CCAB appended to those rules are relevant to section 80HHC.

Departmental circulars.—The following departmental circulars are relevant to section 80HHC as amended by the Finance Act, 1985:—

I. 'Provisions of section 80HHC of the Income-tax Act, 1961—Clarification regarding.—Section 80HHC, as amended by the Finance Act, 1985, provides that an assessee, being an Indian company or a person (other than a company) who is resident in India, exports out of India during the previous year, any goods or merchandise to which this section applies, will be allowed deduction of an amount, not exceeding 50% of the profits derived by the assessee from the export of such goods or merchandise. The proviso to this section lays down that an amount equal to the amount of the deduction claimed should be debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee.

2. The question whether distribution of dividends out of such reserve is utilisation of the reserve for the purposes of the assessee's business has been considered by the Board. It has been decided that the provisions of the above proviso will not be infringed if dividends are distributed by the assessee out of such reserve.' [Circular No. 463, dated 11th July, 1986.]

II. 'Provisions of section 80HHC of the Income-tax Act, 1961—Sharing of tax benefit between the export houses/trading houses and manufacturers—Regarding.—Section 80HHC as amended by the Finance Act, 1985, provides that where an assessee, being an Indian company or a person (other than a company) resident in India exports out of India during the

‡ Form No. 10CCAB is the prescribed form in this regard.

previous year, any goods or merchandise to which this section applies, he will be allowed a deduction of an amount not exceeding 50% of the profits derived from the export of such goods or merchandise.

2. Representations have been received to the effect that the manufacturers of goods or merchandise exported through the export houses/trading houses do not derive any benefit under the amended provisions of section 80HHC. It has further been represented that if the tax benefit derived by the export house/trading house under section 80HHC is passed on to the concerned manufacturer, the amount so passed on should be allowed as a deduction in the computation of the total income of the export house/trading house.

3. The matter has been examined by the Board. It has been decided that if any export house/trading house holding a certificate in this regard issued by the Ministry of Commerce for the relevant accounting period passes on to the manufacturer part or whole of the amount of tax benefit derived by the former on account of deduction under section 80HHC, then the amount of actual payment made to the manufacturer for passing on the tax benefit may, subject to the limit laid down hereinafter, be treated as business expenditure and be allowed as deduction in the computation of the total income of the export house/trading house.

4. The total amount of the tax benefit on account of deduction under section 80HHC and the tax benefit on account of the deduction in paragraph 3 above shall, in no case, exceed the maximum amount of tax benefit available under section 80HHC to the export house/trading house. For computing the maximum amount of tax benefit under section 80HHC, however, the "profits", as referred to in that section, will be determined after taking into account the deduction referred to in paragraph 3 above.

5. It has further been decided by the Board that the payment so received by any manufacturer whose goods or merchandise are exported through the export house/trading house will not be included in the total income of the manufacturer if such claim for non-inclusion is supported by a certificate by the export house/trading house.' [Circular No. 466, dated 14th August, 1986.]

There are also departmental circulars explaining section 80HHC as inserted by the Finance Act, 1983. These are:—

1. *Sale proceeds in non-convertible rupees from bilateral account countries to be treated at par for purposes of section 80HHC.*—'The Finance Act, 1983, has inserted a new section 80HHC in the Income-tax Act, 1961, to provide a deduction in the computation of taxable income with reference to the export turnover of goods and merchandise out of India in cases where the sale proceeds are receivable in convertible foreign exchange.

2. Doubts have been raised as to whether sale proceeds received from bilateral account countries would be covered by the expression "convertible foreign exchange". It is clarified that receipts of sale proceeds in non-

convertible rupees from bilateral account countries (e.g., Russian Roubles) will be treated on par with sale proceeds received in any other convertible foreign exchange for the purposes of section 80HHC.' [Press Note dated 21-6-1983 issued by the Government].

II. Export of cut and polished diamonds and gem stones—Whether eligible for deduction under section 80HHC?— 'Section 80HHC has been inserted in the Income-tax Act, 1961, by the Finance Act, 1983, and the deduction under this provision is admissible in relation to assessment year 1983-84 and subsequent years. The tax concession is, however, not admissible in relation to export of, *inter alia*, minerals and ores.

2. The Board has received a large number of references on whether the export of cut and polished diamonds and gem stones will qualify for deduction under section 80HHC. The Board are advised of the following features in the export of cut and polished diamonds and gem stones:

- (i) No export of raw diamonds is permitted under the import and export regulations.
- (ii) Export from India takes place of cut and polished diamonds.
- (iii) Raw diamonds imported from abroad after being cut and polished are exported in the processed form and this will be supported by documents scrutinised and certified by the Customs Department.
- (iv) Import of rough diamonds is allowed as replenishment against the actual exports of cut and polished diamonds, after the actual exports take place, not necessarily in the previous year.
- (v) Import of rough diamonds is allowed replenishment on the basis of licences issued by the Joint Chief Controller of Imports and Exports, on the basis of the requisite documents produced by the exporters.

Rough diamonds are also allowed to be imported on the basis of import licence issued by the licensing authorities for which the importer has to execute a bond with the Government of India for re-export after cutting and polishing within a prescribed time for a value worked out on a given formula. Detailed procedure in this regard is explained in the Import-Export Policy.

3. In view of the position brought by the above features, the export of cut and polished diamonds and gem stones will not amount to export of "minerals and ores" and hence will qualify for relief under section 80HHC of the Income-tax Act, 1961.' [Circular letter F. No. 178/206/83-IT(A-I), dated 22nd May, 1984.]".

Page 2134: section 80-I:

After the paragraph titled "*Historical background*", add,—

"Relevant rule and form.—Rule 18BBB of the Income-tax Rules, 1962, and Form No. 10CCB appended to those rules are relevant to section 80-I."

Page 2135: section 80-I:

Before the footnote, *add*,—

“Legislative amendments.—I. *The Finance Act, 1983.*—Section 80-I has been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85. The scope and effect of the amendments made by this Act in section 80-I have been elaborated in paragraphs 43.1 to 43.5 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages cvi-cvii of Vol. 4.

II. *The Finance Act, 1985.*—Section 80-I has also been amended by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1985. The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Deduction in respect of profits and gains from industrial undertakings, etc.—28.1 Under section 80-I of the Income-tax Act, a “tax holiday” is granted, *inter alia*, to new industrial undertakings (including cold storage plants) which commence production within the period of four years next following March 31, 1981, or ships which are brought into use within the period of four years next following April 1, 1981, or hotels which start functioning after March 31, 1981, but before April 1, 1985. Under the existing provisions, 20 per cent. of the profits and gains (25 per cent. in the case of companies) derived from such industrial undertakings or a ship or the business of a hotel are allowed as a deduction in computation of the total income of the assessee for certain initial years.

28.2 The provisions relating to tax holiday are intended to provide an incentive for investment in certain desired directions and promote industrialisation. In view of the continued need to provide this incentive, the Finance Act, 1985, has extended this concession by another five years, that is, in relation to new industrial undertakings which commence production before April 1, 1990; ships which are brought into use on or before the said date and hotels which starts functioning before the said date.’”.

Page 2137: section 80-I:

After serial No. (9), giving illustrative cases of other receipts which were held to constitute part of the profits and gains attributable to the business of a priority industry, *add*,—

“(10) Receipts from service charges and sale of scraps relating to priority industry [*CIT v Wheels India Ltd.*, (1983) 141 ITR 745 (Mad)].

(11) Cash subsidy granted by the Central Government in order to encourage export of products of priority industry [*CIT v L. M. Van Moppes Diamond Tools Ltd.*, (1984) 145 ITR 195 (Mad)]. Also see, *CIT v India Piston Rep. Co. Ltd.*, (1987) 167 ITR 917 (Mad).

(12) Balancing charge worked out in accordance with section 41(2) [*CIT v Madras Electrical Conductors (P.) Ltd.*, (1984) 146 ITR

- 316 (Mad)]. Also see, *English Electric Co. of India Ltd. v CIT*, (1987) 63 CTR (Mad) 135.
- (13) Interest charged from a sole distributor of the products of the priority industry [*CIT v Flender Macneill Gears Ltd.*, (1984) 150 ITR 83 (Cal)].
- (14) Machining charges for repairs to machinery and interest on the unpaid sale proceeds of machinery manufactured [*CIT v Buckau Wolf New India Engg. Works Ltd.*, (1984) 150 ITR 180 (Bom); *Addl. CIT v Buckau Wolf New India Engg. Works Ltd.*, (1986) 157 ITR 751 (Bom)].
- (15) Share of profit earned by the assessee-partner from a firm engaged in a priority industry [*CIT v Bharat Ram Charat Ram (P) Ltd.*, (1986) 157 ITR 199 (Del), a case where their Lordships' attention was not drawn to the specific provisions of section 80A(3) placing a ban on such double deduction]. Also see, *CIT v Bharat Ram Chart Ram P. Ltd.*, (1987) 163 ITR 861 (Del), concerning the then section 80E.
- (16) Profits on sale of import entitlements obtained from export of products of a priority industry [*CIT v Davidson of India (P.) Ltd.*, (1986) 161 ITR 407 (Cal)].
- (17) Profit on direct sale of PVC resin by an assessee running PVC compound plant and PVC processing plant [*Ahmedabad Mfg. & Calico (P.) Ltd. v CIT*, (1986) 162 ITR 800 (Guj)].
- (18) Profit of PVC plant on sale of PVC resin to assessee's other unit of PVC compound; sale price to be ascertained at the market rate [*CIT v Ahmedabad Mfg. & Calico Printing Co. Ltd.*, (1986) 162 ITR 760 (Guj)].
- (19) Profit on sale of by-products of the priority industry [*CIT v Shree Mansinghka Oil Mills (P.) Ltd.*, (1987) 32 Taxman 458 (Bom)].
- (20) Technical fees received under a collaboration agreement [*CIT v West Coast Paper Mills Ltd.*, (1987) 63 CTR (Bom) 27].
- (21) Interest on deposits in the nature of security for the purpose of contracts entered into by the assessee and interest from suppliers of raw materials [*English Electric Co. of India Ltd. v CIT*, (1987) 63 CTR (Mad) 135]."

Page 2138: section 80-I:

After serial No. (3), giving illustrative cases where the receipts were held not to constitute part of eligible profits, add,—

- "(4) Interest received on short-term deposits with banks and other financial institutions [*CIT v Cochin Refineries Ltd.*, (1985) 154 ITR 345 (Ker), on the point of hire charges on machines and cars, the matter was remanded to the Tribunal].
- (5) Profits on sale of dry fruits, in case of a manufacturer of oil engines [*CIT v Kirloskar Oil Engines Ltd.*, (1986) 157 ITR 762 (Bom)].
- (6) Interest on deposits with banks [*English Electric Co. of India Ltd. v CIT*, (1987) 63 CTR (Mad) 135]."

Page 2138: section 80-I:

On the subject "*Computation of the eligible profits—how to be made?*", reference may also be made to the following discussion:

"The profits and gains eligible for deduction under the then section 80E/80I were held to be computed after making deduction in respect of—
—unabsorbed depreciation and unabsorbed development rebate relating to the same industry [*CIT v Madras Rubber Factory Ltd.*, (1984) 146 ITR 604 (Mad)]. Also see, *CIT v Ennore Foundries Ltd.*, (1985) 151 ITR 464 (Mad); *CIT v North Koshalpur Colliery Co. P. Ltd.*, (1986) 161 ITR 756 (Cal); *CIT v Bisra Stone Lime Co. Ltd.*, (1987) 164 ITR 693 (Cal); *CIT v Rambal (P.) Ltd.*, (1984) 42 CTR (Mad) 45.

But, the following were held not deductible in computing such eligible profits—

—loss incurred during the same year in a non-priority industry [*CIT v Canara Workshops Pr. Ltd.*, (1986) 161 ITR 320 (SC), **approving** *CIT v Belliss & Morcom (I) Ltd.*, (1982) 136 ITR 481 (Cal) and *CIT v Balanoor Tea & Rubber Co. Ltd.*, (1974) 93 ITR 115 (Mys) and **overruling** *CIT v English Electric Co. Ltd.*, (1981) 131 ITR 277 (Mad). Also see, *CIT v Devidayal Rolling Refineries (P.) Ltd.*, (1984) 17 Taxman 299 (Bom).

—deductions allowable under sections 80J and 80K [*Rampur Distillery & Chemical Co. Ltd. v CIT*, (1983) 140 ITR 725 (All), **overruled** on another point in *Lohia Machines Ltd. v Union of India*, (1985) 152 ITR 308 (SC)].

The decisions in *CIT v Orient Paper Mills Ltd* [(1983) 139 ITR 763 (Cal)] and *CIT v Oil India Ltd* [(1983) 143 ITR 848 (Cal)] holding that the eligible profits were to be computed before setting off the unabsorbed development rebate relating to the same industry, do not lay down the law correctly in view of the Supreme Court ruling in *Cambay Electric Supply Industrial Co. Ltd. v CIT* [(1978) 113 ITR 84 (SC)]. Also see, *CIT v Tractors & Farm Equipments Ltd.*, (1982) 133 ITR 147, 153-54 (Mad); *Orissa Cement Ltd. v CIT*, SLP (Civil) Nos. 11378 and 11364 of 1981: (1984) 146 ITR (St.) 186 (SC).".

Page 2139: section 80-I:

On the subject "*Priority industries*", reference may also be made to the following discussion:

"These were held to be priority industries:

(1) Extraction of aluminium from scrap [*CIT v Rashtriya Metal Industries Ltd.*, (1983) 142 ITR 306 (Bom)]. Also see, *CIT v Rashtriya Metal Industries Ltd.*, (1984) Taxation 72(1)-12 (Bom).

(2) Mixing of base mineral oil with certain additives to produce finished products like lubricating oil [*CIT v Indian Oil Blending Co. Ltd.*, SLP (Civil) Nos. 8419-8423 of 1980: (1983) 142 ITR (St.) 1 (SC)].

(3) Dyes and intermediates were held to be petro-chemicals [*CIT v Amar Dye-Chem Ltd.*, SLP (Civil) No. 5296 of 1981: (1984) 147 ITR (St.) 3 (SC)].

(4) Manufacturer of water treatment plants and ion exchange resins was held to be a manufacturer of chemical machinery [*CIT v Ion Exchange (I) Ltd.*, SLP (Civil) No. 6035 of 1981: (1984) 147 ITR (St.) 3-4 (SC)].

(5) Processing of seeds [*CIT v Tarai Development Corpn. Ltd.*, (1982) 30 CTR (All) 279].

(6) Bus-body building over the chassis supplied by the owner [*CIT v Jayanand Khira & Co. Pr. Ltd.*, (1987) Taxation 86(3)-70 (Bom)].

(7) Refining of crude oil [*Circular No. 57, dated 23rd March, 1971*: (1971) 80 ITR (St.) 66].

Also see, *Addl. CIT v Trichy Steel Rolling Mills Ltd.*, SLP (Civil) Nos. 6215-6218 of 1980: (1984) 147 ITR (St.) 6 (SC).

These were held not to be priority industries:

(1) Production of pigments out of alumina [*Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal)].

(2) Manufacture of aluminium articles and not aluminium metal [*Jeewanlal (1929) Ltd. v CIT*, (1983) 142 ITR 448 (Cal); *Jeewanlal (1929) Ltd. v CIT*, (1983) 142 ITR 460 (Cal)].

(3) Manufacture of insulated copper wires known as winding wires [*Hindustan Wire Products Ltd. v CIT*, (1986) 161 ITR 749 (SC), affirming *CIT v Hindustan Wire Products Ltd.*, (1983) 144 ITR 945 (Punj)].”.

Page 2148: section 80J:

At the end of the paragraphs titled “1922 Act”, add,—

“In *Addl. CIT v Suessin Textile Ball Bearings Ltd* [(1987) 163 ITR 582 (Bom)], it has been held that the provisions of section 84 of the 1961 Act are *in pari materia* with the provisions of section 15C of the 1922 Act.”.

Page 2155: section 80J:

At the end of line 15 from top, add,—“The decision in *Sawyer's case* [(1980) 122 ITR 259 (Bom)] has been followed in *CIT v Harit Synthetic Fabrics Pr. Ltd* [(1986) 162 ITR 640 (Bom)].”.

Page 2155: section 80J:

At the end of the page, add,—

“On the subject of approval of hotel under section 80J(6)(d), reference may be made to *East India Hotels Ltd. v CBDT*, (1986) 161 ITR 227 (Cal); *Circular No. 383, dated 22nd June, 1984*: (1984) 148 ITR (St.) 13-15.”.

Page 2160: section 80J:

At the end of the page, add,—

“In the facts of the following cases, it was held that there came into

existence a new unit which was eligible for deduction under section 80J:—

- (1) *Indian Aluminium Co. Ltd. v CIT*, (1983) 140 ITR 114 (Cal).
- (2) *CIT v Madras Rubber Factory Ltd.*, (1984) 149 ITR 405 (Mad).
- (3) *CIT v Madras Rubber Factory Ltd.*, (1984) 149 ITR 411 (Mad).
- (4) *Delhi Cloth & General Mills Co. Ltd. v CIT*, (1986) 158 ITR 64 (Del).
- (5) *CIT v A. K. Silk & Woollen Mills Pr. Ltd.*, (1986) 158 ITR 462 (Del).
- (6) *CIT v Shri Digvijay Cement Co. Ltd.*, (1986) 159 ITR 253 (Guj).
- (7) *CIT v Kamani Engg. Corpn. Ltd.*, (1986) 161 ITR 473 (Bom).
- (8) *CIT v Simmonds Marshall Ltd.*, (1986) 161 ITR 817 (Bom).
- (9) *CIT v Metal Lamp Caps (P.) Ltd.*, (1987) 163 ITR 822 (Karn).
- (10) *CIT v Electric Lamp Manufacturers (India) P. Ltd.*, (1987) 165 ITR 115 (Cal).
- (11) *CIT v Union Carbide India Ltd.*, (1987) 165 ITR 550 (Cal).
- (12) *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 558 (Cal).
- (13) *CIT v Bharat Electronics Ltd.*, SLP (Civil) No. 10768 of 1981: (1984) 146 ITR (St.) 7 (SC).
- (14) *CIT v U Foam (P.) Ltd.*, (1987) 167 ITR 586 (AP).

On the other hand, in the facts of the following cases, it was held that there did not come into existence a new unit which was eligible for deduction under section 80J:—

- (1) *Kanhiyalal Rameshwar Das v CIT*, (1985) 156 ITR 463 (Raj).
- (2) *Khoday Industries Pr. Ltd. v CIT*, (1987) 163 ITR 646 (Karn).
- (3) *CIT v Travancore Rayons Ltd.*, (1987) 164 ITR 134 (Ker)."

Page 2161: section 80J:

In line 20 from top, after "134 ITR 240 (Bom)",—*add*,—""; *CIT v Merck Sharp & Dohme of India Ltd.*, (1983) 140 ITR 334 (Bom); *CIT v Merck Sharp & Dohme of India Ltd.*, (1983) 140 ITR 332 (Bom)" [holding that if the assessee was a licensee, then the decision in *Capsulation Services* case: (1973) 91 ITR 566 (Bom) would not be applicable].

2161: section 80J:

After line 21 from top, *add*,—

"In the then section 84(2)(ii) of the 1961 Act, the word 'transfer' cannot be given a restricted meaning and it is comprehensive enough to include a lease as well [*L. G. Balakrishnan & Bros. Ltd. v CIT*, (1985) 151 ITR 270 (Mad)]."

Page 2162: section 80J:

In the 1st line, after "12 CTR (Bom) 235", *add*,—""; *Addl. CIT v Suessin Textile Ball Bearings Ltd.*, (1987) 163 ITR 582 (Bom)".

Page 2162: section 80J:

In line 12 of the paragraph titled "Not formed by transfer of old machi-

nery", after "28 CTR (Bom) 199", *add*,—"=(1982) 138 ITR 644 (Bom); *CIT v Shankar Cold Storage*, (1982) 138 ITR 286 (All); *Advani Oerlikon (P.) Ltd. v CIT*, (1984) 43 CTR (Bom) 8."

Page 2162: section 80J:

At the end of the page, *add*,—

"The words 'previously used for any purpose' in *Explanation 2* to section 80J(4) are wide enough and cover all old and used machinery, no matter who used such machinery previously and from which source it was acquired. There is no justification for reading after the last word 'purpose', the words 'by the assessee himself' [*Kanhiyalal Rameshwar Das v CIT*, (1985) 156 ITR 463, 469 (Raj)]. However, a contrary view has been taken by the Andhra Pradesh High Court in *Electronic Corporation of India Ltd. v CIT* [(1985) 151 ITR 381 (AP)] holding that the acquisition of plant and machinery used by someone else does not disentitle the assessee from the benefit of section 80J. Also see, *CIT v Suessin Textile Bearing Ltd.*, (1982) 135 ITR 443 (Guj), special leave petition granted by the Supreme Court: (1986) 161 ITR (St.) 65 (SC)."

Page 2163: section 80J:

At the end of the paragraph titled "*Maintenance of separate accounts for the new unit—whether essential?*", *add*,—

"In *CIT v Travancore Rayons Ltd* [(1987) 164 ITR 134 (Ker)] the Tribunal found that 'no separate' accounts are maintained and it becomes necessary to make an allocation of all the liabilities, apart from the liability directly related to the new unit'. These findings were held to disentitle the assessee to get the benefit of section 80J."

Page 2164: section 80J:

In line 25 from top, after "93 ITR 548 (Bom)", *add*,—""; *CIT v Food Specialities Ltd.*, (1985) 156 ITR 790 (Del)" [holding that the production contemplated by section 80J is commercial production as against experimental production].

Page 2164: section 80J:

On the subject "*Manufacture, implication of*", reference may also be made to—

(1) *CIT v J. B. Kharwar & Sons*, (1987) 163 ITR 394 (Guj) [process of dyeing and printing of grey cloth involves manufacture or production of articles].

(2) *CIT v Tarai Development Corpn. Ltd.*, (1982) 30 CTR (All) 279 [processing of seeds].

(3) *CIT v Union Carbide India Ltd.*, (1987) 165 ITR 550 (Cal) [operations of cleaning, peeling, packing and freezing the shrimps]. Also see, *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 558 (Cal).

Page 2166: section 80J:

After line 5 from top, *add*,—

“The view taken by the Bombay High Court in *Indian Oil Corpn. Ltd. v ITO* [(1973) 92 ITR 241 (Bom)] has been accepted in the departmental circular No. 380, dated 10th April, 1984 [(1984) 149 ITR (St.) 1-2] and has been followed in *CIT v Karnataka Cement Pipe Factory* [(1985) 151 ITR 247 (Karn)]; *CIT v Kamani Engg. Corpn. Ltd* [(1986) 161 ITR 473 (Bom)]. Also see, *CIT v Shahney Steel & Press Works (P.) Ltd.*, (1987) 165 ITR 399 (AP).”.

Page 2166: section 80J:

After serial No. 4, giving illustrative cases where the concerned amount was held to form part of the ‘capital employed’, *add*,—

- “5. Amount deposited for short-term in bank and intended for payment of taxes [*Phillips Carbon Black Ltd. v CIT*, (1982) 136 ITR 205 (Cal)].
6. Amount outstanding on account of purchase consideration of plant and machinery—such consideration to be satisfied by allotment of shares which could not be allotted on the first day of the computation period [*CIT v Lucas TVS Ltd.*, (1985) 153 ITR 239 (Mad)].
7. Dollar Loans taken by a public sector company and guaranteed by the President of India and the Reserve Bank of India were held to be ‘debentures’ within the meaning of rule 19A(3)(a), as it stood between 1-4-1968 and 31-3-1972 and, therefore, includible in computing the ‘capital employed’ [*CIT v Cochin Refineries Ltd.*, (1983) 142 ITR 441 (Ker); *CIT v Cochin Refineries Ltd.*, (1985) 154 ITR 345 (Ker)].
8. Value of the machinery purchased under a hire purchase agreement [*Add. CIT v General Industries Corporation*, (1985) 155 ITR 430 (Del)].
9. Unpaid purchase price of machinery was held not to be deducted in computing the ‘capital employed’, as the same was held covered by rule 19A(3)(b), as it stood between 1-4-1968 and 31-3-1972 [*CIT v Bilaspur Spng. Mills Industries Ltd.*, (1986) 157 ITR 237 (Cal)].
10. Capital expenditure on scientific research which has already been allowed deduction under section 35 [*CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217, 227 (AP)].
11. Pre-paid expenses falling into the category of assets acquired by purchase [*CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217, 228 (AP)].
12. Amounts due to the assessee [*CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217, 231-2 (AP)].
13. ‘Unallocated capital expenditure’ pertaining to plant and machinery [*CIT v Advani Oerlikon Pr. Ltd.*, (1986) 161 ITR 449 (Bom)].

14. Value of work-in-progress [*Periyar Chemicals Ltd. v CIT*, (1986) 162 ITR 163 (Ker); *CIT v Union Carbide India Ltd.*, (1987) 165 ITR 546 (Cal); *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 558 (Cal)]. Also see, *CIT v Mangla Engg. Works Co. P. Ltd.*, SLP (Civil) No. 13 of 1981: (1983) 144 ITR (St.) 10 (SC).
15. Value of 'building and machinery under erection' and advance for purchase of machinery and raw material [*CIT v Indian Smelting and Refining Co. Ltd.*, (1987) Taxation 86(3)-9 (Bom)].

Page 2166: section 80J:

After serial No. 1, giving illustrative cases where the concerned amount was held not to form part of the 'capital employed', *add*,—

- "2. Excess advance tax paid [*CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217, 232 (AP)].
3. Unclaimed dividends and equity application money which were liable to be refunded [*CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217, 232-33 (AP)].
4. Interest accruing on borrowed capital [*CIT v Union Carbide India Ltd.*, (1987) 165 ITR 546 (Cal)].
5. Current liabilities and provisions [*Catalysts & Chemicals India (West Asia) Ltd. v CIT*, (1987) 166 ITR 769 (Ker)].

Page 2166: section 80J:

At the end of line 14 from bottom, *add*,— "*Simmonds's case* [106 ITR 374 (Bom)] has been followed in *CIT v Siemens India Ltd.* [(1984) Taxation 75(1)-32 (Bom)]."

Pages 2166-2167: section 80J:

For the paragraphs titled "*Borrowings—whether to form part of the 'capital employed'?*", *substitute*,—

"**Borrowings—not to form part of 'capital employed'.**—For a period of almost nineteen years, from 1st April, 1949, up to 31st March, 1968, all borrowed monies and debts owed by the assessee were excluded in computing the 'capital employed' for the purpose of granting tax holiday to new industrial undertakings. Rule 19A(3), effective between 1st April, 1968, and 31st March, 1972, prescribed for inclusion of debentures of companies as also of long-term borrowings (repayable in not less than seven years) in the computation of 'capital employed'. With effect from 1st April, 1972, this inclusion was withdrawn and the position as it stood prior to 1st April, 1968, was restored by substitution of a new rule 19A(3) by the Income-tax (Third Amendment) Rules, 1971.

The *vires* of so-substituted rule 19A(3) had been challenged and the Supreme Court ruled in *Lohia Machines Ltd. v Union of India* [(1985) 152 ITR 308, 356 (SC)] that that rule 19A(3) in so far as it provides for

exclusion of borrowed monies and debts and particularly long-term borrowings in the computation of 'capital employed', cannot be said to be outside the rule-making authority conferred on the Central Board of Direct Taxes under section 80J(1) and is a perfectly valid piece of subordinate legislation.

In so upholding the validity of rule 19A(3), the Supreme Court has overruled *Century Enka Ltd. v ITO* [(1977) 107 ITR 909 (Cal)]; *Madras Industrial Linings Ltd. v ITO* [(1977) 110 ITR 256 (Mad)]; *CIT v U.P. Hotel-Restaurant Ltd.* [(1980) 123 ITR 626 (All)]; *Kota Box Mfg. Co. v ITO* [(1980) 123 ITR 638 (All)]; *Ganesh Steel Industries v ITO* [(1980) 126 ITR 258 (Punj)]; *Warner Hindustan Ltd. v ITO* [(1982) 134 ITR 158 (AP)] and *Rampur Distillery & Chemical Co. Ltd. v CIT* [(1983) 140 ITR 725 (All)].

The Supreme Court has approved the view taken in *CIT v Anand Bahri Steel & Wire Products* [(1982) 133 ITR 365 (MP)] and *CIT v K.N. Oil Industries* [(1982) 134 ITR 651 (MP)]. Also see, *Delhi Cloth & General Mills Co. Ltd. v CIT*, (1986) 158 ITR 64 (Del); *CIT v Ganga Iron Industries*, (1985) Taxation 79(3)-320 (MP).

In view of the above Supreme Court ruling [152 ITR 308 (SC)], the view taken in *Beco Engg. Co. Ltd. v CIT* [(1984) 148 ITR 478 (Punj)]; *J. K. Synthetics Ltd. v Union of India* [(1984) 145 ITR 497 (All)]; *CIT v Warner Hindusthan Ltd.* [(1986) 160 ITR 217, 227, 229 (AP)]; *CIT v Chandra Katha Industries* [(1982) Taxation 66(3)-146 (All)] is so more good law on the point. Also see, *Rockweld Electrodes (India) Ltd. v CIT*, (1986) 158 ITR 819 (Mad).

It may be noted that as a result of the amendment of section 80J by inserting a new sub-section (1A) therein by the Finance (No. 2) Act, 1980, the provisions of rule 19A have been incorporated in section 80J, with retrospective effect from 1st April, 1972. Such amendment is merely of clarificatory nature and is valid [*Lohia Machines Ltd. v Union of India*, (1985) 152 ITR 308, 358 (SC)].

Thus, except for certain exclusions for assessment years 1968-69 to 1971-72, borrowed capital is to be excluded in the computation of 'capital employed' [*Traco Cable Co. Ltd. v CIT*, (1982) 138 ITR 385 (Ker); *CIT v Toshiba Anand Lamps Ltd.*, (1984) 145 ITR 563 (Ker); *CIT v M.A. Paper & Card Board Factory Pr. Ltd.*, (1986) 160 ITR 877, 880 (Cal); *CIT v Kamani Engg. Corpn. Ltd.*, (1986) 161 ITR 473 (Bom); *Alkali & Chemical Corporation of India Ltd. v CIT*, (1986) 161 ITR 820 (Cal); *Periyar Chemicals Ltd. v CIT*, (1986) 162 ITR 163 (Ker); *Kaira District Co-operative Milk Producer's Union Ltd. v CIT*, (1986) 162 ITR 496 (Guj); *Indian Aluminium Co. Ltd. v CIT*, (1986) 162 ITR 788 (Cal); *CIT v Shree Synthetics Ltd.*, (1986) 162 ITR 819 (MP); *Vinnyallore Industries Ltd. v CIT*, (1986) 162 ITR 881 (AP); *CIT v K.N. Oil Industries*, (1987) 163 ITR 112 (Ori); *Sunil Synchem Ltd. v CIT*, (1987) 163 ITR 467 (Raj); *CIT v Alimchand Topandas*, (1987) 163 ITR 511 (Bom); *CIT v Kerala Solvent Extractions Ltd.*, (1987) 165 ITR 174 (Ker); *CIT*

v Shahney Steel & Press Works (P.) Ltd., (1987) 165 ITR 399 (AP); *CIT v Alkali & Chemical Corporation of India Ltd.*, (1987) 165 ITR 698 (Cal); *CIT v Guest Keen Williams Ltd.*, (1987) 166 ITR 405 (Cal); *Taurian Tubes v CIT*, (1987) 166 ITR 629 (Pat); *Catalysts & Chemicals India (West Asia) Ltd. v CIT*, (1987) 166 ITR 769 (Ker); *CIT v Shalabh Sharma*, (1985) Taxation 78(3)-356 (MP) = (1987) Taxation 85(3)-120 (MP); *CIT v M.R. Gupta Industries*, (1987) Taxation 84(3)-376 (Del); *CIT v Pannalal Kankaria*, (1985) Tax LR 1045 (MP); *CIT v Kumar Rolling Mills*, (1985) Tax LR 1132 (MP); *CIT v Orient Beverages Ltd.*, (1986) Tax LR 499 (Cal); *CIT v Perfect Pottery Co. Ltd.*, (1986) 54 CTR (MP) 363; *CIT v Mahakoshal Potteries*, (1986) 55 CTR (MP) 140; *CIT v Escorts Ltd.*, (1987) 59 CTR (Del) 284; *CIT v Protein Products Ltd.*, (1987) 167 ITR 157 (Ker); *CIT v Santosh Industries*, (1987) 33 Taxman 558 (Raj); *CIT v Sri Ganganagar Fertilizer Corporation*, (1987) 34 Taxman 80 (Raj); *Orissa Industries Ltd. v CIT*, (1987) 34 Taxman 317 (Ori).

Even where, for assessment years 1968-69 to 1971-72, the certain borrowed capital was to be included in the computation of 'capital employed', the borrowing must have been from a third party and not from another unit belonging to the assessee itself [*CIT v South India Viscose Ltd.*, (1983) 140 ITR 58 (Mad)].

Amounts due towards tax liability.—Rule 19A(8) and section 80J(1A) (III) read with their respective *Explanations* contemplate as deduction towards tax liability only those amounts which have become due and payable. These do not contemplate mere provision made by the assessee towards liability to tax [*CIT v Metal Powder Co. Ltd.*, (1984) 145 ITR 510 (Mad)].

Also see, *CIT v Hoechst Pharmaceutical Ltd.*, (1984) 149 ITR 94 (Bom).".

Page 2168: section 80J:

After serial No. 10, giving cases holding that a moiety of the profits of the relevant previous year was to form part of the 'capital employed' under rule 19(5), *add*,—

11. *CIT v Elecon Engg. Co. Ltd.*, (1987) 167 ITR 639 (SC), affirming serial No. 1 above.
12. *Karamchand Premchand Pvt. Ltd. v CIT*, (1982) 137 ITR 209 (Guj).
13. *CIT v Industrial Machinery Mfg. Pr. Ltd.*, (1985) 151 ITR 533 (Guj), overruled on another point in *CIT v Cellulose Products of India Ltd.*, (1985) 151 ITR 499 (Guj—FB).
14. *Kaira District Co-operative Milk Producers' Union Ltd. v CIT*, (1986) 162 ITR 496 (Guj).
15. *Ahmedabad Mfg. & Calico Pr. Ltd. v CIT*, (1986) 162 ITR 800 (Guj).

Also see, *CIT v Tata Engineering & Locomotive Co. Ltd.*, (1977) 108 ITR 869 (Bom); *CIT v Industrial Perfumes Ltd.*, (1982) 138 ITR 583 (Bom).".

Page 2168: section 80J:

On the subject "*Written down value of depreciable assets to be taken*", reference may also be made to *Bharat General & Textile Ltd. v CIT*, (1985) 153 ITR 747 (Cal); *CIT v Coromandel Fertilisers Ltd.*, (1985) 156 ITR 283, 311-13 (AP); *Birla Jute Mfg. Co. Ltd. v CIT*, (1986) 162 ITR 413 (Cal); *Kaira District Co-operative Milk Producer's Union Ltd. v CIT*, (1986) 162 ITR 496 (Guj), following, (1979) 116 ITR 319 (Guj); *Indian Aluminium Co. Ltd. v CIT*, (1986) 162 ITR 788 (Cal); *Indian Oxygen Ltd. v CIT*, (1987) 164 ITR 466 (Cal); *Union Carbide India Ltd. v CIT*, (1987) 165 ITR 678 (Cal).

Page 2169: section 80J:

After line 8 from top, *add*,—

"In *CIT v Krishna Sahakari Sakhar Karkhana Ltd.* [(1985) 156 ITR 13 (Bom)], non-refundable deposits received by a co-operative society from its members where such deposits were subsequently to be converted into share capital have been held not 'debts due' within the meaning of pre-1971 rule 19A(3) and therefore not liable to be deducted in computing the 'capital employed'.

In *CIT v Boehringer Knoll Ltd.* [(1984) 148 ITR 70 (Bom)], the interest on loan was shown on the liability side of the balance-sheet. It was held that such liability had not become due on the first day of the computation period and therefore could not be excluded in computing the 'capital employed'."

Page 2169: section 80J:

On the subject "*User of the asset during the year not essential*", reference may also be made to *CIT v Boehringer Knoll Ltd.*, (1984) 148 ITR 70 (Bom); *CIT v Hindustan Polymers Ltd.*, (1985) 156 ITR 860 (Bom); *CIT v South India Viscose Ltd.*, (1987) 163 ITR 674 (Mad); *CIT v Sundaram Industries Ltd.*, (1987) 166 ITR 35 (Mad); *CIT v Advani Oerlikon (P.) Ltd.*, (1986) 24 Taxman 392 (Mad); *CIT v Alcock Ashdown & Co.*, (1984) Taxation 75(1)-26 (Bom); *CIT v Indian Smelting & Refining Co. Ltd.*, (1987) Taxation 86(3)-9 (Bom).

Page 2169: section 80J:

For the first 7 lines of the paragraph titled "*Crucial date for the computation of 'capital employed'*", *substitute*,—

"Rule 19A(2), in so far as it provides for the computation of the 'capital employed' as on the first day of the computation period is not *ultra vires* and is a perfectly valid rule within the rule-making authority conferred upon the Board [*Lohia Machines Ltd. v Union of India*, (1985) 152 ITR

308, 358 (SC), overruling *Century Enka Ltd. v ITO*, (1977) 107 ITR 123 (Cal) and *Warner Hindustan Ltd. v ITO*, (1982) 134 ITR 158 (AP); *Indian Aluminium Co. Ltd. v CIT*, (1986) 162 ITR 788 (Cal); *CIT v Shalabh Sharma*, (1985) Taxation 78(3)-356 (MP); *CIT v Escorts Ltd.*, (1987) 59 CTR (Del) 284]. The decision in *CIT v Coromandel Fertilisers Ltd.* [(1985) 156 ITR 283, 306-7 (AP)] should be deemed to have been impliedly overruled by the Supreme Court ruling [152 ITR 308 (SC)].

Thus, for the purpose of deduction under section 80J, the 'capital employed' in respect of a particular previous year is to be fixed as on the first day of that year. The average of increase and decrease of the assets and liabilities after the first day of the relevant previous year is irrelevant [*Indian Oxygen Ltd. v CIT*, (1987) 164 ITR 466, 474 (Cal)]."

Pages 2169-2170: section 80J:

On the subject " 'Tax holiday' period", reference may be made to *CIT v A.K. Silk & Woollen Mills Pr. Ltd.*, (1986) 158 ITR 462 (Del).

Pages 2170-2171: section 80J:

At the end of the paragraph titled "*Per annum, what it implies?*", add,—

"The above view to the effect that the deduction is available to the full extent even though the new undertaking actually worked only for a part of the year, has consistently been followed in *CIT v Sarabhai Sons Ltd.* [(1983) 143 ITR 473 (Guj)]; *CIT v Mysore Petro-Chemical Ltd.* [(1984) 145 ITR 416 (Karn)]; *CIT v Metal Powder Co. Ltd.* [(1984) 145 ITR 510 (Mad)]; *CIT v English Indian Clays Ltd.* [(1984) 149 ITR 112 (Ker)]; *CIT v Oyster Packagers (P.) Ltd.* [(1985) 152 ITR 471 (Cal)]; *Rockweld Electrodes (India) Ltd. v CIT* [(1986) 158 ITR 819 (Mad)]; *CIT v Fitwell Caps Pr. Ltd.* [(1986) 159 ITR 454 (Karn)]; *CIT v Warner Hindustan Ltd.* [(1986) 160 ITR 217 (AP)]; *CIT v Sanghi Beverages (P.) Ltd.* [(1987) 163 ITR 536 (MP)]; *Indian Oxygen Ltd. v CIT* [(1987) 164 ITR 466 (Cal)]; *CIT v Kerala Solvent Extractions Ltd.* [(1987) 165 ITR 174 (Ker)]; *CIT v Shahney Steel & Press Works (P.) Ltd.* [(1987) 165 ITR 399 (AP)]; *CIT v Uni Sankyo Ltd.* [(1987) 165 ITR 402 (AP)]; *CIT v Warner Hindustan Ltd.* [(1987) 165 ITR 403 (AP)]; *Union Carbide India Ltd. v CIT* [(1987) 165 ITR 558 (Cal)]; *CIT v Sundaram Industries Ltd.* [(1987) 166 ITR 35 (Mad)]; *CIT v Godrej Soaps Pr. Ltd.* [(1987) 63 CTR (Bom) 114]; *CIT v Nagpur Steel & Alloys (P.) Ltd.* [(1987) Tax LR 731 (Cal)]; *CIT v Protein Products Ltd* [(1987) 167 ITR 157 (Ker)]. Also see, *CIT v Madras Rubber Factory Ltd.*, SLP (Civil) No. 14455 of 1982: (1985) 151 ITR (St.) 12 (SC); *CIT v Continuous Stationery Co. Pr. Ltd.*, SLP (Civil) No. 10778 of 1980: (1985) 156 ITR (St.) 162 (SC).

The above view has been accepted in the following departmental circular:—

'Deduction under section 80J of the Income-tax Act, 1961, in respect of profits and gains from new industrial undertakings.—Under section 80J of the Income-tax Act, 1961, a deduction at the rate of 6% per annum of the capital employed is allowed from the profits of new industrial undertakings, ships and hotels which fulfil the prescribed conditions. In the case of companies where the new industrial undertakings begin to manufacture after 31-3-1976 or ships are first brought into use after 31-3-1976 or the business of a hotel starts functioning after that date, the deduction is admissible at the rate of 7½% per annum. The question as to the meaning to be given to the phrase "per annum" has been considered by the Board.

2. The Karnataka High Court in the case of *Commissioner of Income-tax, Karnataka-II v Mysore Petrochemicals Ltd., Bangalore* [1984] 145 ITR 416, has held that the relief under section 80J is admissible for the entire year irrespective of the period of operation of the new industrial undertaking in that year. A similar view has been expressed by the Madras High Court in the case of *CIT v Simpson & Co.* [1980] 122 ITR 283. The Board have accepted the interpretation placed on the phrase "per annum" by the Karnataka High Court.

3. In view of the foregoing, the deduction under section 80J should not be reduced proportionately with reference to the period for which the business of the undertaking, ship or hotel was not carried on during the relevant previous year.' [Circular No. 378, dated 3rd March, 1984.]".

Page 2171: section 80J:

At the end of the paragraph titled "*ITO's duty to allow deduction even though not claimed by the assessee*", add,— "Relief under section 80J must be allowed once all the conditions necessary to afford the relief have been satisfied. The right which the Legislature has conferred upon the assessee arises section 80J(2) and that right is an absolute and unqualified right and that right is not made conditional upon any computation by the Income-tax Officer or any notice issued by him. The circular by the CBR in June, 1955, read with the decision of the Supreme Court in *Navnit Lal C. Javeri v K.K. Sen, AAC* [(1965) 56 ITR 198 (SC)] makes it incumbent upon the Income-tax Officer to draw the attention of the assessee to the relief allowable under section 80J to which the assessee appears to be entitled but which he has omitted to specify in the return. Even if the Income-tax Officer does not notify the amount of loss under section 80J the assessee is entitled to carry forward the losses and have them determined in a subsequent year [*CIT v Mattoo Worsted Spng. & Wvg. Mills*, (1983) 139 ITR 1020, 1023-24 (J & K)].

Tax holiday concession possible through rectification proceedings.—No doubt, an obligation is imposed on an assessing authority to grant a concession or relief available under the statute concerned and such concession or relief cannot be refused merely because the assessee had omitted to claim the same. But, the mere existence of such an obligation is not sufficient for

allowance of such concession or relief. For that, precise factual material and clear data must be contained in the record so as to enable the assessing authority to consider the allowance of such concession or relief. In the absence of such material, no fault can be found with the assessing authority for not allowing the concession or relief.

Thus, where such material is on record and the assessee does not claim relief in that regard in the return or in the course of assessment proceeding, such relief can be availed of by the assessee by resorting to rectification proceedings. However, where such material does not exist in the record at the time of completing the assessment, the relief cannot be claimed through rectification proceedings because in such a case it cannot be said that there was a mistake apparent from the record in omitting to grant the relief [see, *Anchor Pressings (P.) Ltd. v CIT*, (1986) 161 ITR 159 (SC), affirming *Anchor Pressings (P.) Ltd. v CIT*, (1975) 100 ITR 347 (All); *Indian Aluminium Co. Ltd. v CIT*, (1983) 141 ITR 258 (Cal); *Subhash Chandra Sarvesh Kumar v CIT*, (1981) 132 ITR 619 (All), special leave petition dismissed by the Supreme Court: (1984) 146 ITR (St.) 5 (SC)].

Allowance in appeal proceedings.—Where the necessary data and material are on record, the appellate authority can direct allowance of benefit under section 80J even though no claim was made before the Income-tax Officer [*CIT v Ganga Engineering Works*, (1987) 165 ITR 795 (MP)].

But no such direction can be given if there is no material on record supporting such claim [*CIT v G. S. Rice Mills*, (1982) 136 ITR 761 (All)].”.

Pages 2171-2172: section 80J:

On the subject “Carry forward and set off of deficiency—section 80J (3)”, reference may also be made to *East India Hotels Ltd. v CBDT*, (1986) 161 ITR 227 (Cal).

Page 2172: section 80J:

In last line of the paragraph titled “Claim for set off possible even though deficiency was not determined in earlier loss-years”, after “123 ITR 385 (Mad)”, add,— “; *CIT v Mattoo Worsted Spng. & Wvg. Mills*, (1983) 139 ITR 1020 (J & K); *CIT v M.A. Paper & Cardboard Factory Pr. Ltd.*, (1986) 160 ITR 877 (Cal); *CIT v Ennore Foundaries Ltd.*, (1985) 151 ITR 464 (Mad); *CIT v Veljan Hydrair (P.) Ltd.*, (1985) 151 ITR 734 (AP)”.

Page 2172: section 80J:

At the end of the paragraph titled “Claim for set off possible even though deficiency was not determined in earlier loss-years”, add,—

“However, according to the Karnataka High Court in *CIT v Sree Valliappa Textiles Ltd.* [(1987) 166 ITR 548 (Karn)], sub-sections (1) and (3) of section 80J have to be read together and not in isolation. From a

joint reading, it follows that the computation of the deficiency should be under section 80J(1) and it is only that deficiency that can be carried forward and set off under section 80J(3). The scheme of section 80J is very clear and does not require that a claim for computation should be made only where there is profit and gain.”.

Page 2174: section 80J:

At the end of the paragraphs titled “*Computation of profits for the purpose of section 80J*”, *add*,—

• “The benefit of section 80J is confined only to the profits and gains derived from the new industrial undertaking. Such profits and gains are to be computed after setting off unabsorbed depreciation as also unabsorbed business losses of earlier years, if any [see, *CIT v Shankar Cold Storage*, (1982) 138 ITR 286 (All); *CIT v North Arcot District Co-operative Spng. Mills Ltd.*, (1985) 151 ITR 238 (Mad); *Leco Engg. Co. Ltd. v CIT*, (1984) 148 ITR 478 (Pun); *Transformers & Electricals Kerala Ltd. v CIT*, SLP (Civil) No. 4621 of 1982: (1984) 149 ITR (St.) 129 (SC); *G. T. N. Textiles Ltd. v CIT*, SLP (Civil) Nos. 278-280 of 1983: (1985) 151 ITR (St.) 13 (SC)].”.

Pages 2174-2175: section 80J:

On the subject “*Already absorbed losses, etc., of the new unit cannot affect the current year's profits of that unit*”, reference may also be made to *CIT v Warner Hindusthan Ltd.*, (1986) 160 ITR 217 (AP).

Page 2175: section 80J:

In the last two lines of the paragraph titled “*Profits contemplated by section 80J must be derived from the new unit*”, after “135 ITR 278 (Ker)”, *add*,— “; *CIT v Cochin Refinery Ltd.*, (1983) 142 ITR 441 (Ker)” [holding that interest earned on bank deposits cannot be termed as profits derived from the new unit].

Page 2177: section 80J:

At the end of the paragraph titled “*Question of law*”, *add*,—

“The question whether the Tribunal was justified in allowing the benefit of section 80J is a question of law [*CIT v Jagjit Industries Ltd.*, (1987) 61 CTR (Del) 334].”.

Page 2178: section 80JJ (now omitted):

Before the text of section 80JJA, *add*,—

“Section 80JJ omitted.—Section 80JJ was amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85. The scope and effect of these amendments have been elaborated in paragraphs 44.1 to 44.4 of the departmental circular

No. 372, dated 8th December 1983, which have been reproduced at pages cvii-cviii of Vol. 4.

Thereafter, section 80JJ has been omitted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986, i.e., for and from assessment year 1986-87. The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Deduction in respect of profits and gains from business of live-stock breeding or poultry or dairy farming.—29.1 Under the provisions of section 80JJ of the Income-tax Act, a taxpayer deriving income from the business of livestock breeding or poultry or dairy farming is entitled to a deduction in the computation of his total income of an amount equal to fifteen per cent. of the aggregate profits and gains derived from these sources or Rs. 15,000, whichever is higher. Where the aggregate amount of such profits and gains does not exceed Rs. 15,000, the entire amount is exempt from tax. In computing the deduction in relation to profits and gains derived from the business of poultry farming, profits and gains in excess of Rs. 1 lakh are ignored.

29.2 In the context of the raising of the exemption limit, reduction in tax rates and the fact that this concession is open to abuse, the Finance Act, 1985, has discontinued the tax concession under section 80JJ of the Income-tax Act.

29.3 This amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'".

Page 2179: section 80JJA (now omitted):

Before the text of section 80K, *add,—*

"Section 80JJA omitted.—Section 80JJA was omitted by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, i.e., for and from assessment year 1984-85. Thus, section 80JJA remained operative for assessment years 1980-81 to 1983-84."

Page 2182: section 80K (now omitted):

Before the paragraph titled "80K concession discontinued", *add,—*

"Section 80K omitted.—Section 80K has been omitted by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987. The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(xi) Withdrawal of certain tax concessions.—25.1 Deduction in respect of dividends attributable to profits and gains from new industrial undertakings or ships or hotel business:

Under the existing provisions of section 80K of the Income-tax Act, any dividends paid by a company out of profits in respect of which the company is entitled to a deduction under section 80J are exempt from income-

tax in the hands of the shareholders. However, the dividends distributed out of profits derived from industrial undertakings, hotels and ships which, respectively, went into production or started functioning or were put to use after 31st March, 1976, are not entitled to the aforesaid tax exemption. With a view to withdrawing concessions which are no longer relevant, the Finance Act has deleted section 80K of the Income-tax Act. As a consequential measure, sub-section (2) of section 80L, sub-section (2) of section 80M, clause (xxiv) of sub-section (1) of section 80VVA and sub-section (3) of section 197 of the Income-tax Act, have been deleted and amendment made in section 80A(3).

25.2 These amendments will take effect from 1st April, 1987, and will apply in relation to the assessment year 1987-88 and subsequent years.’”

Page 2183: section 80K:

Before line 3 from bottom, *add*,—

“Excess relief granted to a shareholder—remedy.—Where dividends are distributed by a company without deducting tax at source or after deducting tax on only a portion of the dividends on the basis of a provisional certificate issued by the Income-tax Officer under section 197(3) of the 1961 Act, in relation to the portion of the dividend relating to the profits of a new industrial undertaking which is exempt under section 80K, but after the final assessment of the company and working out of the profits of the company under section 80J, the Income-tax Officer is of the view that the benefit allowed under the provisional certificate might be excessive, the remedy is not to reopen the assessment of the shareholder under section 147 on the basis that income has escaped assessment but compensating in a later year by the operation of rule 20 of the Income-tax Rules, 1962. Rule 20 is quite complex in its operation. The amount which is to be granted to a shareholder as exempted dividend is not exactly the same as the amount enjoyed by the company in that year. It is based on the sum total of the exemptions enjoyed by the company in several years and on the amount already granted to the shareholder and what remains to be granted to the shareholder. The scheme of the Act is, therefore, to delink the assessment of the company under section 80J from the assessment of the shareholders under section 80K, but the two things are made interdependent on each other by the wording of rule 20. The only way in which section 80K can be worked out in the case of shareholders is to give adjustment in some subsequent year, otherwise they will be paying tax on the exempted portion of their dividend all the time [*CIT v C. P. Modi & Sons*, (1986) 157 ITR 492 (Del)].”

Page 2189: section 80L:

Before the paragraph titled “*Eligible assessee*”, *add*,—

“Subsequent amendments to section 80L.—L. *The Finance Act, 1983*.—Section 80L has been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, i.e., for and from assessment year 1984-

85. The scope and effect of these amendments have been elaborated in paragraphs 46.1 to 46.5 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages cix-cx of Vol. 4.

II. *The Finance Act, 1984.*—By this Act, section 80L has been amended with effect from 1st April, 1985, *i.e.*, for and from assessment year 1985-86.

The scope and effect of such amendments have been elaborated in paragraphs 21.1 to 21.7 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages cxi-cxiii of Vol. 4.

III. *The Taxation Laws (Amendment) Act, 1984.*—By this Act, section 80L(1)(c) has been amended with retrospective effect from 1st April, 1972, *i.e.*, for and from assessment year 1972-73. Further, a new sub-section (3) has been inserted in section 80L with retrospective effect from 1st April, 1976, *i.e.*, for and from assessment year 1976-77. For import of these amendments, reference may be made to page cxiii of Vol. 4.

IV. *The Finance Act, 1986.*—By this Act, section 80L(1)(ii) has been substituted by a new section, with effect from 1st April, 1987. The scope and effect of such substitution have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘(xviii) *Measures for raising resources for the public sector.*—36.1 Under the existing provisions of section 80L of the Income-tax Act, interest on such debentures issued by any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank) or any other institution or authority, as notified by the Central Government is allowed as a deduction within specified limits. Under the provisions of section 193 of the Income-tax Act, no tax is deductible at the time of payment of any interest on such debenture.

36.2 With a view to tapping rural savings for the benefit of public sector, section 80L(1)(ii) of the Income-tax Act has been amended so as to include also the interest on debentures issued by a public sector company as an item qualifying for deduction. With a view to avoiding inconvenience to those who may wish to subscribe to these debentures, section 193(ii) has been amended so as to exclude the interest payable on such debentures from the requirement of deduction of tax at source.

36.3 The amendment to section 80L will apply in relation to the assessment year 1987-88 and subsequent years.

36.4 The amendment to section 193 will take effect from 1st June, 1986.’

The omission of section 80L(2) by the Finance Act, 1986, is consequential to the omission, by that Act, of section 80K.

V. *The Finance Act, 1987.*—The omission by this Act, of the *Explanation* to section 80L(1)(ii) is consequential to the insertion, by that Act, of section 2(36A), with effect from 1st April, 1987.”

Page 2189: section 80L:

On the subject "*Eligible assessee*", reference may also be made to—

(1) *CIT v P. N. Ramaswamy*, (1984) 146 ITR 627 (Mad) [where the interest income of the wife is tagged with husband's income, husband is entitled to relief under section 80L].

(2) *CIT v G. B. J. Seth & C. O. J. Seth*, (1987) 166 ITR 604 (MP) [for and from assessment year 1972-73, a general AOP is not entitled to deduction under section 80L].

Also see, *CIT v Madhu Kanta Ben*, (1987) Taxation 84(3)-139 (MP).

Page 2190: section 80L:

After serial No. (g), giving details of notifications under section 80L(1) (ii), add,—

“(h) 7.5% 15 years IRCI Bonds for Rs. 5 crores issued by the Industrial Reconstruction Corporation of India Ltd. in March 1983 [S. O. 3763, dated September 22, 1983: (1983) 144 ITR (St.) 42].

(i) 7-year 14% Secured Redeemable Non-convertible Bonds (A-Series) issued by M/s. Indian Telephone Industries Ltd. Bangalore in 1986; and

7-year 14% Secured Redeemable National Thermal Power Corporation Bonds—1986—1st Series [S. O. 3641, dated August 6, 1986: (1987) 164 ITR (St.) 73].

(j) 7-year 14% Secured Redeemable Non-convertible Bonds issued by M/s. Neyveli Lignite Corporation Ltd. [S. O. 4031, dated October 17, 1986: (1987) 164 ITR (St.) 120].

(k) 7-year 14% Secured Redeemable Non-convertible Bonds (13th Series) issued by Rural Electrification Corporation Ltd. [S. O. 4091, dated October 25, 1986: (1987) 164 ITR (St.) 121].

(l) 7-year 14% Secured Redeemable Non-convertible Bonds (A Series) issued by Messrs National Hydroelectric Power Corporation Ltd. [S. O. 4186, dated October 23, 1986: (1987) 164 ITR (St.) 121].

(m) 7-year 14% Secured Redeemable Non-convertible Telephone Bonds—T86 Series, 1st issue, issued by the Mahanagar Telephone Nigam Ltd. subject to the proviso [S. O. 467, dated December 12, 1986: (1987) 165 ITR (St.) 306].

Other notifications.—I. National Deposit Scheme, 1984, has been notified for the purposes of section 80L(1)(ii-a), with effect from 1st April, 1985 [GSR 453(E), dated June 15, 1984: (1984) 148 ITR (St.) 62-8].

II. The Industrial Development Bank of India has been approved for the purposes of section 80L(1)(via), with effect from 2nd April, 1984 [GSR 86(E), dated February 29, 1984: (1984) 147 ITR (St.) 22].”

Page 2196: section 80M:

After line 10 from top, *add*,—

“VIII. *The Finance Act, 1984*.—By this Act, section 80M(1) has been amended with effect from 1st April, 1985, *i.e.*, for and from assessment year 1985-86. The scope and effect of such amendments have been elaborated in paragraphs 22.1 to 22.3 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at page cxiv of Vol. 4.

IX. *The Finance Act, 1986*.—By this Act, a new section 80M has been substituted in place of the existing section 80M, with effect from 1st April, 1987. In effect, the substituted section 80M enacts provisions of the then existing section 80M(1) with omission of certain words, etc., and omission of section 80M(2), which was consequential to the omission, by that Act, of section 80K.”.

Page 2196: section 80M:

On the interpretation of section 80M, reference may also be made to—

(1) *CIT v Ellenbarrie Tea Co. Ltd.*, (1984) 146 ITR 617 (Cal) [benefit of section 80M granted in original assessment before setting off unabsorbed depreciation for earlier years—rectification held not justified for withdrawing such benefit on the basis of negative figure of total income arrived at after such set-off].

(2) *CIT v Indian Iron & Steel Co. Ltd.*, (1985) 156 ITR 314 (Cal) [assessee, a beneficiary under a trust, was held entitled to benefit under section 80M].

(3) *CIT v National Insurance Co Ltd.*, (1986) 159 ITR 314 (Cal) [an assessee carrying on insurance business and whose profits are to be computed as per section 44 was held entitled to benefit under section 80M].

(4) *G. Atherton & Co. v CIT*, (1987) 165 ITR 527 (Cal) [no relief under section 80M was held allowable where the total income was computed at a loss].

Page 2203: section 80MM:

Before line 2 (except footnote) from bottom, *add*,—

“III. *Approval of agreements for the purpose of section 80MM of the Income-tax Act, 1961—Guidelines regarding*.—Attention is invited to the Board's Circular No. 140 [F. No. 167/231/74-IT(AI)], dated 6th July, 1974, para. 1(xiii), wherein it was stated that in the case of a composite agreement which specified a consolidated amount as consideration for purposes which included matters outside the scope of section 80MM, the Board may not approve such an agreement for purposes of section 80MM of the Act if, in the opinion of the Board, it was not possible to properly ascertain and determine the amount of the consideration relatable to the provision of technical know-how or services in connection with provision of such technical know-how qualifying for section 80MM. Thus, the benefit of section 80MM could be denied to the entire amount of royalty, commission, fees, etc., receivable under such an agreement. The Board has had

occasion to reconsider it. It has been decided that in such cases approval would be granted by the Board subject to a suitable disallowance for the non-qualifying items, after taking into consideration the totality of the agreement, so that the balance royalty, commission, fees, etc., which is for provision of technical know-how or services in connection with provision of such technical know-how covered by section 80MM, can be exempted.' [Circular No. 332, dated 25th March, 1982.]

IV. Circular No. 341, dated 10th May, 1982, has been reproduced at page 6325, *ante*, in connection with section 80AB.

V. 'Approval of agreements for the purposes of section 80MM of the Income-tax Act, 1961—Guidelines regarding.—Attention is invited to the guidelines contained in sub-para. (vii) of para. 1 of Board's Circular No. 140, dated 6th July, 1974. The guidelines contained in sub-para. (vii) of para. 1 have since been modified and the revised guidelines contained in this paragraph are as follows:—

- (vii) (a) Where the agreement is for provision of a technical know-how which is likely to assist in the manufacture of goods or the processing of materials or in the installation or erection of plant or machinery for such manufacture or processing, the technical know-how provided should be manufacturing/processing technology and/or plant/machinery design and/or installation/erection technology of plant or machinery.
- (b) Agreements for provision of know-how relating to management organisations, sales, finance and accounts and for market or demand studies will not qualify for approval.
- (c) Agreements for preparation of feasibility or project reports for the purpose of supporting applications for assistance from financial or other institutions will also not qualify for approval.
- (d) Agreements for preparation of feasibility or project reports aimed at assessing the techno-economic viability of a project for the purpose of investment decisions will qualify for approval under section 80MM only if the objectives for which the report was prepared had matured so far as it relates to qualifying items under section 80MM in the project reports.'

[Circular No. 360, dated 16th May, 1983.]".

Page 2204: section 80MM:

On the interpretation of section 80MM, reference may also be made to—

(1) *R. G. Sales Pr. Ltd. v ITO*, (1983) 140 ITR 466 (Cal) [an assessee can have two characters, one to become a selling agent and, at the same time, to enter into a contract for the supply of technical services—the Board was directed to reconsider the approval to the concerned agreement on the above criteria].

(2) *Birla Consultants Ltd. v CBDT*, (1986) 157 ITR 98 (Bom) [CBDT was directed to consider afresh the application for approval of the agreement].

(3) *Albright Morarji & Pandit Ltd. v CBDT*, (1987) 166 ITR 583 (Bom) [refusal of approval to the agreement was held justified as there was evidence that the agreement was not genuine].

Also see *Technofab Engg. Pr. Ltd. v Union of India*, SLP (Civil) No. 7167 of 1983: (1984) 147 ITR (St.) 4-5 (SC).

Page 2204: section 80MM (now omitted):

Before the text of section 80N, *add*,—

“Section 80MM omitted.—Section 80MM has been omitted by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85.”.

Page 2207: section 80N (now omitted):

Before the text of section 80-O, *add*,—

“Section 80N omitted.—Section 80N was amended by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985, *i.e.*, for and from assessment year 1985-86. The scope and effect of such amendment have been elaborated in paragraphs 23.1 to 23.3 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at page cxv of Vol. 4.

Finally, section 80N has been omitted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986, *i.e.*, for and from assessment year 1986-87. The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Deduction in respect of dividends received from certain foreign companies.—30.1 Section 80N of the Income-tax Act provides for a deduction in the computation of the total income of fifty per cent. of the income by way of dividends received by an Indian company on shares allotted to it in a foreign company in consideration of any patent, invention, design, technical “know-how”, etc., made available or technical services rendered to the foreign company.

30.2 With the reduction in the rates of corporation tax and the limited utility of this concession at present, the Finance Act, 1985, has discontinued the concession under section 80N of the Income-tax Act.

30.3 This amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.’.”.

Page 2210: section 80-O:

After line 17 from top, *add*,—

“Subsequent amendments.—I. *The Finance Act, 1984.*—Section 80-O has been amended by the Finance Act, 1984 (21 of 1984), with effect from

1st April, 1985, *i.e.*, for and from assessment year 1985-86. The scope and effect of such amendment have been elaborated in paragraphs 24.1 to 24.3 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages cxv-cxvi of Vol. 4.

II. *The Finance Act, 1985.*—By this Act, the existing *Explanation* to section 80-O has been substituted by a new *Explanation*, with effect from 1st April, 1986. This substitution is consequential to the omission, by that Act, of section 80N.

III. *The Finance Act, 1987.*—Certain amendments have been made by this Act in section 80-O, with effect from 1st April, 1988. The scope and effect of these amendments to section 80-O, as also of omission of section 155(12), have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Modification in the provisions relating to deduction in respect of royalties, etc., from certain foreign enterprises.—33.1 Under the existing provisions of section 80-O of the Income-tax Act, an Indian company is entitled to a deduction of an amount equal to 50 per cent. of the income by way of royalty, commission, fees and similar payments, received from the Government of a foreign State or a foreign enterprise for consideration for the use outside India of any patent, invention, model, etc. Such income has either to be received in India in convertible foreign exchange or having been received in foreign exchange outside India is brought into India. *Explanation (ii)* to section 80-O, however, provides that if out of any such income, any sum is utilised by the Indian company outside India in the manner permitted by the Reserve Bank of India, the same would be deemed to have been brought into the country and a deduction shall be allowed in respect of such amount.

The basic purpose of this incentive provision is to earn foreign exchange for the country. This can be done effectively only by ensuring inward remittance of foreign exchange within a reasonable period. Therefore, *Explanation* to section 80-O as it stood earlier has been deleted and a third proviso has been inserted in section 80-O, laying down that a deduction will be allowed under that section only in respect of income which is received in India in convertible foreign exchange or has been brought into India within a period of six months. However, where the Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is unable to do so within the time specified above, because of reasons beyond his control, he may allow such further time as may be considered necessary.

33.2 It was held by the Bombay High Court that a branch abroad of a company resident in India would be a "foreign enterprise", within the meaning of section 80-O. As this was not the intention of the law, a new clause (ii) has been inserted in *Explanation* to section 80-O to clarify that a "foreign enterprise" means a person who is a non-resident.

33.3 Where the deduction under section 80-O is not allowed on the ground that the qualifying amount of income has not been brought into India in the relevant year but has been received or brought into India in a subsequent year, the assessment order in respect of the deduction under section 80-O was rectified under section 154 within a period of 4 years from the date on which income was either received in India or brought into India. The power to make such an amendment is derived from section 155(12). Consequent to the introduction of the proviso referred to in paragraph 33.2 above, the provisions of section 155(12) were no longer necessary and have, therefore, been deleted.

33.4 The deletion of the words “or having.....dealing in foreign exchange” has been done only to simplify the section. It does not, in any manner, reduce or narrow down the scope of application of the section itself. In other words, as long as the payment made by the foreign state or foreign enterprise in convertible foreign exchange is received within the specified period in India by or on behalf of the assessee in accordance with the law in this regard [Foreign Exchange Regulation Act, 1973], the assessee would be entitled to the deduction under this section, if the other requirements in this regard are satisfied.

33.5 These amendments will come into force with effect from the 1st April, 1988, and, will, accordingly, apply to assessment year 1988-89 and subsequent years.’”.

Page 2213: section 80-O:

On the interpretation of section 80-O, reference may also be made to—

(1) *Searle (India) Ltd. v CBDT*, (1984) 145 ITR 673 (Bom) [fees received for technical service rendered in India were held not eligible for deduction under section 80-O].

(2) *Apte Amalgamations Ltd. v CBDT*, (1985) 153 ITR 824 (Bom) [the Board was directed to consider the application for approval of the agreement after condoning delay].

(3) *Gannon Dunkerley & Co. Ltd. v CBDT*, (1986) 159 ITR 162 (Bom) [section 80-O not to be interpreted in a narrow manner—on facts, refusal to approval held not justified].

(4) *Simon Carves India Ltd. v ITO*, (1986) 159 ITR 167 (Cal) [if conditions of section 80-O are satisfied, the Board is duty bound to exercise its discretion and grant approval].

(5) *Indian Hume Pipe Co. Ltd. v CBDT*, (1987) 165 ITR 537 (Bom) [for obtaining deduction under section 80-O, the agreement need not necessarily be between the assessee and the foreign enterprise—on facts, condition of section 80-O held satisfied].

(6) *CIT v Birla Bros. Pr. Ltd.*, (1987) 165 ITR 586 (Cal) [the date specified in section 80-O is for making the application and not for according the approval].

(7) *Petron Engg. Construction Pr. Ltd. v CBDT*, (1987) 165 ITR 668 (Bom), **affirmed**, *Petron Engg. Construction Pr. Ltd. v CBDT*, (1987) 34 Taxman 401 (Bom) [on facts, royalty received held not eligible for deduction under section 80-O].

Page 2218: section 80P:

After line 8 from top, *add*,—

“Subsequent amendments.—I. *The Finance Act, 1983*.—By this Act, a new clause (b) was substituted in section 80P(2), with effect from 1st April, 1984, i.e., for and from assessment year 1984-85. The scope and effect of the so-substituted section 80P(2)(b) have been elaborated in paragraphs 48.1 to 48.3 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages cxvi-cxvii of Vol. 4.

The amendments made by the Finance Act, 1983 (11 of 1983), in section 80P(3) are consequential to the insertion by that Act, of section 80HHC, with effect from 1st April, 1983, as also to the omission, by that Act, of section 80JJA, with effect from 1st April, 1984.

II. *The Finance Act, 1985*.—The amendments made by this Act in section 80P(3) are consequential to the omission, by that Act, of section 80JJ, with effect from 1st April, 1986.”.

Page 2218: section 80P:

On the subject “*Strict construction necessary*”, reference may also be made to *Vidarbha Co-operative Marketing Society Ltd. v CIT*, (1985) 156 ITR 422 (Bom).

Page 2218: section 80P:

In the last line of the paragraph titled “*Exemption may be curtailed or withdrawn by a Finance Act*”, after “17 CTR (Mad) 306”, *add*,— “ ; *CIT v Jalgaon District Central Co-operative Bank Ltd*, (1983) 143 ITR 326 (Bom). ”.

Pages 2219-2220: section 80P:

The following further cases may be referred to in connection with—
section 80P(2)(a)(i):

(1) *Malwa Mills Karmachari Paraspar Sahakari Sanstha Ltd. v CIT*, (1983) 140 ITR 379 (MP) [interest debited on the loans advanced to another unit of the assessee itself—held not eligible for deduction because the same cannot be deemed to form part of the gross total income].

(2) *CIT v Madras Auto Rickshaw Drivers' Co-operative Society Ltd.*, (1983) 143 ITR 981 (Mad) [assessee-society purchasing auto rickshaws and selling them to its members under hire purchase terms—assessee could not be treated as providing credit facilities].

(3) *CIT v Madurai District Central Co-operative Bank Ltd.*, (1984) 148 ITR 196 (Mad) [interest from securities held as per statutory requirements as also subsidies received from Government for opening new branches and giving loans to poorer sections at lower rate of interest were held income attributable to banking business and eligible for deduction].

(4) *CIT v Dhar Central Co-operative Bank*, (1984) 149 ITR 438 (MP) [income earned by the assessee, a co-operative society carrying on the business of banking and providing credit facilities to its members, from commission and brokerage by dealing in bills of exchange, Government subsidy, admission fee from members, incidental charges, etc., were held eligible for deduction benefit]. Also see, *Bhopal Co-operative Central Bank Ltd. v CIT*, (1985) 156 ITR 655 (MP); *CIT v Bhopal Co-operative Central Bank Ltd.*, (1987) Taxation 84(3)-163 (MP); *Bhopal Co-operative Central Bank v CIT*, (1987) 65 CTR (MP) 101.

(5) *Addl. CIT v Rajasthan State Co-operative Bank Ltd.*, (1987) 163 ITR 213 (Raj) [income from Government securities held by a co-operative society as its stock-in-trade—held eligible for deduction].

(6) *CIT v Bhopal Co-operative Central Bank Ltd.*, (1987) 164 ITR 713 (MP) [interest from Government securities held as per statutory requirement—held eligible for deduction].

section 80P(2)(a)(ii):

(1) *CIT v Taj Textile Industries Co-operative Society Ltd.*, (1987) 34 Taxman 271 (Ker) [assessee-co-operative society engaged in the manufacture and sale of handloom clothes—society purchased raw materials and entrusted the same to workers who carried out the work in thatched shed belonging to the society—held, society was engaged in a 'cottage industry' and eligible for deduction under section 80P(2)(a)(ii)].

section 80P(2)(a)(iii):

(1) *Keshkal Co-operative Marketing Society Ltd. v CIT*, (1987) 165 ITR 437 (MP) [income derived by the Society from its activity of purchasing paddy from its members, milling it and selling the same on its own account—held not eligible for deduction because such income is not from an activity of marketing of agricultural produce of its members].

Also see, *CIT v Karjan Co-operative Cotton Sale Ginning and Pressing Factory*, SLP (Civil) No. 8867 of 1981: (1984) 146 ITR (St.) 3-4 (SC).

section 80P(2)(a)(iv):

(1) *CIT v Tamil Nadu Co-operative Marketing Federation Ltd.*, (1983) 144 ITR 74 (Mad) [profit on sale of fertilisers earned by an apex society to its member-societies, held eligible for deduction because the expression co-operative society covers a primary co-operative society as also an apex co-operative society].

(2) *CIT v Guntur District Co-operative Marketing Society Ltd.*, (1985) 154 ITR 799 (AP) [supply to members as well as non-members—the supply of agricultural implements, etc., does not make the society any the less a society engaged in the supply of agricultural implements, etc., to its members].

(3) *Vidarbha Co-operative Marketing Society Ltd. v CIT*, (1985) 156 ITR 422 (Bom) [co-operative society appointed as distributor of fertilisers—held not entitled to deduction because there was no ‘purchase’ in the commercial sense; section 80P(2)(a)(iv) is confined only to profits on sale to members and does not cover profits on sale to non-members].

section 80P(2)(a)(vi):

(1) *Gora Vibhag Jungle Kamdar Mandali v CIT*, (1986) 161 ITR 658 (Guj) [voting rights in a labour society also given to social workers—society not entitled to deduction as the condition of the proviso to section 80P(2) was not satisfied].

section 80P(2)(c):

(1) *CIT v Guntur District Co-operative Marketing Society Ltd.*, (1985) 154 ITR 799 (AP) [profits attributable to supply of agricultural implements, etc., to non-members held eligible for deduction under section 80P(2)(c)].

(2) *Bhopal Co-operative Central Bank v CIT*, (1987) 65 CTR (MP) 101 [income from locker rent was held eligible for deduction under section 80P(2)(c)].

section 80P(2)(e):

(1) *CIT v Ahmedabad Maskati Cloth Dealers Co-operative Warehouses Society Ltd.*, (1986) 162 ITR 142 (Guj) [rental income derived from letting of shops used for business—held not eligible for deduction because such income could not be said to be derived from the letting of godowns or warehouses].

(2) *Udupi Taluk Agricultural Produce Co-operative Marketing Society Ltd.*, (1987) 166 ITR 365 (Karn) [income derived by way of commission by the assessee for procurement of paddy and rice and reimbursement of transport charges—held not eligible for deduction because the same does not represent income from letting out godowns or warehouses for purposes of storage, etc.].

section 80P(2)(f):

(1) *Addl. CIT v Rajasthan State Co-operative Bank Ltd.*, (1987) 163 ITR 213 (Raj); *CIT v Rajasthan State Co-operative Bank Ltd.*, (1985) 22 Taxman 69 (Raj) [interest on Government securities held as stock-in-trade is not eligible for deduction under section 80P(2)(f)].

Page 2228: section 80QQA:

At the end of the page, *add*,—

“Legislative amendments.—Section 80QQA has been amended by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1985. The scope and effect of such amendments have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Extension of tax concession in respect of income of authors of text-books in Indian languages.—31.1 Section 80QQA of the Income-tax Act provides for a deduction, in the computation of the total income of an author, of an amount equal to 25 per cent. of his income derived from text books, etc., in Hindi and other Indian languages. The deduction is available in respect of any lump-sum consideration for the assignment or grant of any of his interests in the copyright of any such books or of royalties or copyright fees, whether receivable in lump sum or otherwise. The deduction is allowed only where the following conditions are fulfilled:—

- (i) the book has been prescribed or recommended as a text book by any University for a degree or a post-graduate course or is a dictionary, thesaurus or encyclopaedia;
- (ii) the book, dictionary, thesaurus or encyclopaedia is written in a language specified in the Eighth Schedule to the Constitution.

The deduction is admissible for the assessment years 1980-81 to 1984-85 (both inclusive).

31.2 In order to encourage the writing of such books, the Finance Act, 1985, has extended the tax concession in section 80QQA for a further period of 5 years, *i.e.*, for the assessment years 1985-86 to 1989-90 (both inclusive).’.”

Page 2229: section 80R:

Before line 7 from bottom, *add*,—

“Legislative amendment.—Section 80R has been amended by the Finance Act, 1983 (11 of 1983), with effect from 1st April, 1984, *i.e.*, for and from assessment year 1984-85. The scope and effect of such amendment have been elaborated in paragraphs 49.1 to 49.3 of the departmental circular No. 372, dated 8th December, 1983, which have been reproduced at pages cxvii-cxviii of Vol. 4.”

Page 2237: section 80RRA:

After line 5 from top, *add*,—

“Section 80RRA amended.—Section 80RRA has further been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, *i.e.*, for and from assessment year 1988-89. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Modification of provisions in respect of remuneration received from services rendered outside India.—34.1 Presently, section 80RRA of the

Income-tax Act provides for deduction of an amount equal to 50 per cent. of any remuneration received by an individual who is a citizen of India, if such remuneration is received by him in foreign exchange from an employer for any service rendered by him outside India.

34.2 To provide an incentive for bringing foreign exchange into India, the Finance Act, 1987, has enlarged the benefit of deduction to—

- (i) 50 per cent. of the remuneration received by the taxpayer; or
- (ii) 75 per cent. of such remuneration as is brought into India by or on behalf of the taxpayer in accordance with the Foreign Exchange Regulation Act, 1973,

which is higher.

34.3 This amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to assessment year 1988-89 and subsequent years.'

Provisions of section 80RRA explained and analysed.—Section 80RRA talks of "any remuneration.....for any service" rendered outside India. While it uses the word "employer", it does not use the words "employee" or "salary". A party that retains a consultant can properly be described as his employer. The words "any remuneration" are wide enough to cover the fees payable to a consultant (provided, of course, he is a technician as defined by the section) and the words "any service" are wide enough to cover consultancy services. That the benefit under section 80RRA is given only to an individual does not detract from this interpretation. There is nothing in the section which restricts its benefit only to an individual who renders service as or in the status of an employee and receives salary as remuneration [*Aditya V. Birla v CBDT*, (1986) 157 ITR 470, 474 (Bom)]. In the facts of that case, the Government was directed to accord approval to the petitioner's agreement with a foreign company.

In the facts of *CIT v Sitaldas Gyanchand* [(1986) 160 ITR 43 (MP)], the assessee was held not entitled to deduction under section 80RRA because he could not produce the requisite approval certificate.

Departmental circular.—The following departmental circular is relevant to section 80RRA:—

"Section 80RRA of the Income-tax Act, 1961—Scope of the tax concession.—Section 80RRA was inserted in the Income-tax Act, 1961, w.e.f 1-4-1975 by the Finance Act, 1975. Under this section, a resident Indian citizen receiving the remuneration from the Government of a foreign State or a foreign enterprise or any association or body established outside India for any service rendered by him outside India was entitled to a deduction in the computation of his taxable income, of an amount equal to 50% of such remuneration. This deduction was admissible only in the case of Government employees and technicians. The Finance (No. 2) Act, 1977 has substituted this section by a new section with the object of extending

with effect from the assessment year 1978-79, the scope of the concession to remuneration received by Indian technicians, etc., employed outside India by Indian concerns as well.

2. The deduction under section 80RRA is admissible if the following conditions are fulfilled:

- (1) The recipient of the remuneration should be a citizen of India.
- (2) The remuneration would be received in foreign currency from any employer, being the Government of a foreign State or a foreign enterprise or an association or body established outside India or an Indian concern.
- (3) The remuneration must be for services rendered by the employee outside India.
- (4) Where the employee is a Government servant, his services outside India should be sponsored by the Central Government and, in any other case, he must be a technician and the terms and conditions of his service outside India should be approved by the Central Government or the prescribed authority for the purposes of section 80RRA. (The authority to grant approval has been entrusted to the Foreign Tax Division in the Department of Revenue in the Ministry of Finance.)

For this purpose, the expression 'technician' means a person having specialised knowledge and experience in—

- (i) constructional or manufacturing operations or mining or the generation or distribution of electricity or any other form of power; or
- (ii) agriculture, animal husbandry, dairy farming, deep sea fishing or ship building; or
- (iii) public administration or industrial or business management; or
- (iv) accountancy; or
- (v) any field of natural or applied science (including medical science) or social science; or
- (vi) any other field which the Board may prescribe in this behalf, who is employed in a capacity in which such specialised knowledge and experience are actually utilised.

(The only field prescribed by the Board for the purposes of item (vi) so far is the field of journalism.)

(5) Where the employee renders continuous service outside India under an employer for a period exceeding 36 months, no deduction is admissible in respect of the remuneration for services beyond that period.

3. The Board have received a number of queries regarding the interpretation and applicability of the provisions of section 80RRA. These are clarified as under:—

Question No. 1: Whether the approval of the Central Government to the terms and conditions of service outside India for the purposes of section 80RRA is enough for granting deduction under that section?

Answer: No. The approval of the Central Government to the 'terms and conditions of service' in the case of 'technicians' is only one of the several

conditions for purposes of admissibility of deduction under section 80RRA. In other words, the assessing officers while considering the claims for deduction under section 80RRA should not allow the same as a matter of course without verifying as to whether all the other conditions prescribed under section 80RRA are also fully satisfied by the assessee.

Question No. 2: Is it necessary that the relationship of employer-employee/master-servant must exist between the assessee and the payer of the remuneration to be eligible for deduction under section 80RRA?

Answer: Yes. It is necessary that the relationship of employer-employee/master-servant should exist between the assessee and the payer of the remuneration. Individuals who render service outside India in the capacity of independent contractors or consultants, etc., are not eligible for the deduction under section 80RRA.

Question No. 3: Whether masters, mates, captains, etc., working on a ship can be regarded as 'technicians' for the purpose of section 80RRA?

Answer: Having regard to the course content of the certificate of competency granted by the Ministry of Transport to such officers and the actual duties performed by them, masters and mates, marine engineers and radio officers qualify as 'technicians' as they have specialised knowledge and experience in an applied science. In view of the above, seamen working as marine engineers, radio officers, masters, mates, pursers or captains are to be regarded as 'technicians' for the purpose of section 80RRA and they qualify for the tax concession.

Question No. 4: Whether the employees engaged as 'helpers' to masons with the construction companies can also be regarded as 'technicians' within the scope of section 80RRA?

Answer: The Board are advised that the test to be applied in such cases is whether the same work could have been done by any other person without any experience in constructional activities as efficiently as by the applicant. Helpers to masons, who assist in concrete mixing, RCC work, etc., and other persons similarly placed will therefore be regarded as 'technicians'.

Question No. 5: Whether a seaman, who is employed by an Indian concern and goes out on a voyage for some period and thereafter comes back and goes again for certain period under the same employer, is entitled to deduction under section 80RRA even though the aggregate period of his service outside India exceeds 36 months?

Answer: The Board are advised that the crucial expression in the proviso to section 80RRA(1) is 'renders continuous service outside India under

†—The Bombay High Court has taken a contrary view in Aditya V. Birla v CEST [(1986) 157 ITR 470 (Bom)].

or for such employer'. If there is any break in service, it cannot be said that the individual had rendered continuous service outside India for the entire period comprised in the two terms. If the service is for a period not exceeding 86 months, there is no bar to the same individual claiming the deduction in respect of any subsequent employment after he had served the same employer. This position has been accepted by the Board.

Question No. 6: Whether a person who renders continuous service outside India for more than 36 months, but under different employers, is entitled to deduction under section 80RRA?

Answer: In a case where the services outside India are performed under different employers, the periods of service under these employers cannot be clubbed together so as to deny the benefit of deduction as the services under different employers would be under different agreements.

Question No. 7: Whether the 'advances' paid to the seamen employed by the Indian shipping companies in foreign currency while in foreign ports could be considered as remuneration received by the seamen in foreign currency for the purpose of section 80RRA?

Answer: Having regard to the provisions of section 101(4) of the Merchant Shipping Act, 1958, and the agreement entered into between the Indian National Shipowners' Association and the Maritime Union of India, such advances are not mere facilities or loan but are in the nature of part payment of wages in foreign currency. Remuneration received by seamen outside India in foreign currency for services rendered outside India would, therefore, qualify for deduction under section 80RRA of the Income-tax Act, 1961.

Question No. 8: What is the procedure for obtaining the approval of the Central Government to the terms and conditions of service outside India in the case of technicians?

Answer: For obtaining the approval of the Central Government to the terms and conditions of service outside India in the case of 'technicians', every person has to file an application in Form No. ITNS 186 (copy enclosed) in triplicate to the Foreign Tax Division in the Department of Revenue in the Ministry of Finance, as the work for the grant of approval has been entrusted to the Joint Secretary in-charge of the Foreign Tax Division. The application has to be accompanied by certified copies of the document evidencing the terms and conditions of service of the applicant. On receipt of such application, before granting the approval, the Central Government considers whether the applicant can be regarded as a 'technician' within the meaning of section 80RRA(2)(ii). Further, the letter of approval issued by the Central Government clearly specifies the assessment year or the period for which the terms and conditions of service outside India have been approved, in the case of each individual applicant. One

copy of the letter of approval is addressed to the applicant and two copies are forwarded to the Commissioner of Income-tax having jurisdiction over the case of the former. The purpose behind forwarding two copies of the letter of approval to the concerned Commissioner of Income-tax is that one copy may be retained in his office and the other copy be sent to the Income-tax Officer having jurisdiction over the case of the applicant". [Circular No. 356, dated 17th March, 1983].

*Application under section 80RRA of the Income-tax Act, 1961,
for approval of contract of service*

1. (a) Name
(b) Whether citizen of India
(c) Address
(d) Permanent Account No.
(e) Status — Whether resident/not resident/not ordinarily resident.
2. Name and address of the foreign employer. (Also state if the employer is a foreign Government or parastatal organisation).
3. Nature and type of the job.
4. Date of commencement of employment with the foreign employer.
5. Probable duration of employment under the foreign employer.
6. Details of remuneration and mode of payment (pay, allowances, amenities, etc.).
7. Details of technical qualifications, including specialised knowledge and experience in constructional or manufacturing operations etc. (See *Explanation (c)* to section 80RRA).
8. How was the employment secured: whether direct or through Government channels?
9. Whether the applicant is/was a Government servant in India immediately before taking up employment abroad. If so, particulars of the post held.

10. Whether there is any contract of service for the job with the foreign employer and, if so, a copy thereof may be appended.

11. Assessment year in relation to which approval is sought.

12. Remarks.

Date:

Signature of Applicant.

Instructions

1. The application should be made to the Foreign Tax Division, Department of Revenue, North Block, New Delhi-110001, well in time. It will be in the applicant's own interest to obtain Government's approval under section 80RRA of the Income-tax Act, 1961, before taking up the appointment under a foreign employer.

2. The application should be submitted in triplicate and should be accompanied by certified copies of the contract of service, if any, with the foreign employer."

Page 2238: section 80-S (now omitted):

After line 5 from top, *add*,—

"Section 80-S omitted.—Section 80-S has been omitted by the Finance Act, 1986, with effect from 1st April, 1987.

The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'26.1 Deduction in respect of compensation for termination of managing agency, etc., in the case of assessees other than companies.—As per section 80-S of the Income-tax Act, a non-corporate taxpayer is allowed a deduction of an amount equal to 25 per cent. of income by way of compensation for termination of managing agency of certain types subject to a maximum limit of deduction of Rs. 1 lakh. This provision applies to a very small number of taxpayers. Even in the case of those taxpayers, the relief available is only marginal unless the amount of compensation is very large. Besides, there was little justification for such a concession which was amenable to abuse in cases where the termination of managing agency was so arranged by the assessee as to reduce the liability for tax. Hence, this provision has been withdrawn by the Finance Act. A consequential amendment has been made in section 80A(3).

26.2 The amendment will apply in relation to the assessment year 1987-88 and subsequent years.'"

Page 2240: section 80T (now omitted):

After the paragraphs titled "*Scope of section 80T*", *add*,—

"Subsequent amendments.—I. *The Finance Act, 1986.—By this Act, section 80T has been amended with effect from 1st April, 1987. The scope and effect of such amendments have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—*

“23.1 Modification of the provisions relating to deduction in respect of long-term capital gains in the case of non-corporate taxpayers.—Under the provisions of section 80T read with Schedule XII to the Income-tax Act, in respect of long-term capital gains in the case of non-corporate taxpayers, an initial deduction of Rs. 5,000 is admissible and, in addition, a further deduction is admissible, depending upon whether the capital gains relate to buildings or lands or any rights therein on the one hand and other assets on the other, as also the number of years for which an asset has been held. With a view to rationalising the scheme of taxation of capital gains, the initial deduction has been raised from Rs. 5,000 to Rs. 10,000. In addition, if such gains relate to buildings or lands or any rights in buildings or lands, a deduction of an amount of 50 per cent. of the capital gains will be admissible. By another amendment, the deduction relating to the transfer of gold, bullion or jewellery will be treated on the same footing as buildings or lands or any rights in such assets. If the long-term capital gains relate to any other asset, the amount of deduction will be 60 per cent. Thus, the deduction will be allowed irrespective of the period for which the long-term capital asset has been held. In a case where the long-term capital gains relate to buildings or lands and rights in such assets as also to other capital assets, the initial deduction of Rs. 10,000 will be given first in respect of long-term capital gains relating to buildings or lands and then in respect of gold, bullion or jewellery and if the amount of such capital gains is less than Rs. 10,000, the balance will be deducted from long-term capital gains relating to any other capital asset. As a consequential measure, the Twelfth Schedule to the Income-tax Act has been omitted.

23.2 The amendments will apply in relation to the assessment year 1987-88 and subsequent years.”.

II. The Finance Act, 1987.—Section 80T has been omitted by the Finance Act, 1987, with effect from 1st April, 1988. The omission is consequential to the substitution, by that Act, of section 48, with effect from that date.”.

Page 2240: section 80T:

Before line 3 from bottom, *add*,—

“Where the net result under the said ‘long-term capital gains’ is a loss, no deduction is available under section 80T [*CIT v Smt. Sigappi Achi*, ((1983) 140 ITR 448 (Mad))].

Similarly, in *T. Manickavasagam Chettiar v CIT* [(1983) 143 ITR 269 (Mad)], the partner was held not entitled to deduction under section 80T in whose hands net loss was allocated after setting off the long-term capital gains against business loss in the hands of the firm.”.

Page 2241: section 80TT (now omitted):

Before line 3 (except footnotes) from bottom, *add*,—

Section 80TT omitted.—Section 80TT has been omitted by the Fin-

ance Act, 1986 (23 of 1986), with effect from 1st April, 1987. The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

27.1 Deduction in respect of winnings from lottery.—Under section 80TT of the Income-tax Act, in computing the taxable income of a non-corporate entity, the whole of the income by way of winnings from any lottery is excluded from the taxable income in cases where the winnings do not exceed Rs. 5,000. Where the winnings exceed Rs. 5,000, 50 per cent. of such excess is allowed as a deduction. There has been a tremendous growth in the number of lotteries since 1972 when these provisions were first enacted. It has been found that in a large number of cases, lottery winnings have provided a medium to the assesseees to camouflage their unaccounted income/wealth. Under a separate amendment, income by way of winnings from lotteries will be taxed at a flat rate of 40 per cent. In line with the aforesaid amendment, the deduction under section 80TT has been discontinued. However, winnings up to Rs. 5,000 will be exempt as they can come under the general exemption under section 10(3) subject to there not being any other casual and non-recurring income. Consequential amendment has been made in section 80A(3).

27.2 The amendments will apply in relation to the assessment year 1987-88 and subsequent years.'”.

Page 2243: section 80U:

After line 11 from top, *add*,—

“Subsequent amendments.—I. *The Finance Act, 1984.*—Section 80U has been amended by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985.

The scope and effect of these amendments have been elaborated in paragraphs 25.1 to 25.3 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at page cxix of Vol. 4.

II. *The Finance Act, 1987.*—Section 80U has been amended by this Act, with effect from 1st April, 1988. As a result of such amendment, the quantum of deduction has been raised, for and from assessment year 1988-89, to Rs. 15,000 from Rs. 10,000.

Relevant rule.—Rule 11D of the Income-tax Rules, 1962 [which has been reproduced at page 5470 of Vol. 6] is relevant to section 80U.”.

Page 2244: section 80U:

Before the text of section 80V, *add*,—

“The following circular is also relevant to section 80U:

“*Guidelines for exemption under section 80U of the Income-tax Act, 1961—Clarification regarding.*—Circular No. 246, dated 20-9-1978 (F. No. 178/37/77-IT(A1)† laid down certain guidelines for the purpose of grant

† See, pages 2243-2244 of Vol. 2.

of deduction in the case of totally blind or physically handicapped resident persons u/s. 80U of the Income-tax Act, 1961.

2. A large number of references have been received by the Board on the ground that these guidelines laid in the circular do not provide situation for the cases of deaf and dumb persons and mentally retarded persons, etc.

3. The matter has been examined by the Board in consultation with the Ministry of Health & Family Welfare. The Board wish to point out that Circular No. 246 is only illustrative and there could be other situations or other categories of physically handicaps, such as, deafness, dumbness and mental retardation. The facts and circumstances of each case will have to be gone into in determining whether the requirements of section 80U are fully satisfied.' [Circular No. 375, dated January 2, 1984.]".

Pages 2245-2256: section 80V (now omitted):

Before the text of section 80VV, *add*,—

"In *K.J. Somaiya & Sons Pr. Ltd. v CIT* [(1985) 155 ITR 605 (Bom)], the assessee was held entitled to deduction in respect of interest on moneys borrowed for paying instalment of advance tax.

Section 80V omitted.—Section 80V has been omitted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986. The scope and effect of such omission have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Deduction of interest on monies borrowed to pay taxes.—32.1 Section 80V of the Income-tax Act provides for a deduction in respect of interest paid by the taxpayer on moneys borrowed for payment of income-tax. In the context of the policy of reducing the tax rates and removing concessions which are not considered to be necessary, the Finance Act, 1985, has deleted this provision.

32.2 This amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'".

Pages 2245-2256: section 80VV (now omitted):

Before the footnote No. 5, *add*,—

"Section 80VV omitted.—Section 80VV has been omitted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986, *i.e.*, for and from assessment year 1986-87. Thus, section 80VV remained operative for assessment years 1976-77 to 1985-86. The omission is consequential to the insertion, by that Act, of section 40A(12).

In *Indian Oxygen Ltd. v CIT* [(1987) 164 ITR 466 (Cal)], the legal and professional charges claimed by the assessee in excess of Rs. 5,000 for the assessment year 1976-77 were held not allowable. The expression 'in

any case' appearing in the proviso to section 80VV would mean in any case of computation of deductions from total income allowable under that section. It cannot have reference to an income tax case."

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Page 2259: section 80VVA (now omitted):

After the paragraph titled "*Introduction*", *add*,—

"Subsequent amendments.—I. *The Finance Act, 1985*.—Amendments made by this Act in section 80VVA were consequential to the insertion, by that Act, of section 33AB and to the omission, by that Act, of section 80JJ and of section 80N.

II. *The Finance Act, 1986*.—Amendments made by this Act in section 80VVA are consequential to the insertion, by that Act, of section 32AB and to the omission, by that Act, of section 80K.

III. *The Finance Act, 1987*.—By this Act, Chapter VI-B, containing section 80VVA, has been omitted, with effect from 1st April, 1988."

Page 2267: section 86(v):

After line 5 from top, *add*,—

"By the provisions contained in section 86(v), double taxation—once in the hands of the AOP and again in the hands of its members—has been avoided [*Kailash Lamba v CIT*, (1986) 157 ITR 266 (Del)]."

Page 2271: section 89:

At the end of the paragraphs titled "*Relief, when salary paid in arrears or in advance*", *add*,—

"In *Sundaram Motors Pr. Ltd. v Ameerjan* [(1985) 152 ITR 64 (SC)]; *Sant Raj v O. P. Singla* [(1987) 163 ITR 588 (SC)]; *K. C. Joshi v Union of India* [(1987) 163 ITR 597 (SC)], the employee was held entitled to relief under section 89(1) read with rule 21A in respect of lump sum back wages and compensation, etc. Also see, *Satyapal v Wool and Woollen Export Promotion Council*, (1987) 59 CTR (Bom) 221."

Page 2278: section 89:

Delete lines 20 to 26 from top. Before the last line (except footnote), *add*,—

"(4) Income received by a beneficiary from a business carried on by *mutawalli* of a *wakf* is not entitled to earned income relief because the word 'immediately' in that context denotes direct connection between the personal exertion and the receipt of income [*Haji Abdul Hamced v CIT*, (1985) 156 ITR 230 (SC), affirming *Haji Abdul Hamid v CIT*, (1971) 82 ITR 495 (All) and overruling *Haji Abdul Hamid v CIT*, (1980)

122 ITR 1000 (All). The decision in *Haji Abdul Hamid v CIT*, (1983) 144 ITR 948 (All) stands impliedly overruled in view of the above Supreme Court ruling.

- (5) Dividend income was held not eligible for earned income relief [*CIT v Manilal Lallubhai*, (1984) Taxation 75(1)-17 (Bom)]."

Pages 2280-2285: section 80HHC:

The originally enacted section 80HHC was substituted by a new section 80HHC by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986. Further, the so-substituted section 80HHC was amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1987.

Page 2288: section 89A:

After line 4 from top, *add*,—

"In *CIT v Calcutta Steel Co. Ltd.* [(1985) 153 ITR 488 (Cal)], the provisions of section 2(4)(a) of the Finance (No. 2) Act, 1967, dealing with grant of rebate in respect of export sales, have been considered and it has been held that rebate once granted cannot be withdrawn by resorting to rectification proceedings."

Pages 2288-2289: section 89A:

On the subject "*Derivation of export profit is a sine qua non for claiming export rebate*", reference may also be made to *Ahmedabad Mfg. & Calico Pvt. Ltd. v CIT*, (1986) 162 ITR 800 (Guj).

Page 2289: section 89A:

On the subject "*Profits and gains derived from the export—what they include?*", reference may also be made to *Lallubhai Amichand Pr. Ltd. v CIT*, (1985) 151 ITR 215 (Bom), holding that profits earned by the assessee from sale of import entitlements were not profits and gains derived from the export of goods, etc., out of India.

Pages 2290-2291: section 89A:

On the subject "*Determination of export profits*", reference may also be made to *CIT v Indian Copper Corpn. Ltd.*, (1986) 161 ITR 327, 364 (Pat); *CIT v Indian Copper Corpn. Ltd.*, (1986) 162 ITR 905, 908 (Pat).

Pages 2294-2295: section 90:

For last 26 lines at page 2294 and for first 14 lines at page 2295, *substitute*,—

"A. Countries with which agreements have been entered into for avoidance of double taxation of income are given hereunder. For the text of comprehensive agreements, reference may be made as under:—

| <i>Country</i> | <i>Subject-matter</i> | <i>Notification No.</i> | <i>ITR Reference</i> |
|--------------------------------|--|--|--|
| (1) | (2) | (3) | (4) |
| 1. Austria | Agreement between the Republic of India and the Republic of Austria for the avoidance of double taxation with respect to taxes on income | GSR 588, dated 5-4-1965 and corrected by GSR 1250, dated 27-8-1965 | 56 ITR (St.) 17 58 ITR (St.) 12 |
| 2. Belgium | Agreement between the Government of India and the Government of Belgium for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income | GSR 323(E), dated 6-6-1975 and corrected by GSR 416 (E), dated 18-7-1975 | 101 ITR (St.) 6 101 ITR (St.) 23 |
| 3. Canada | Agreement between the Government of India and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 1108(E), dated 25-9-1986 | 164 ITR (St.) 87 |
| 4. Czechoslovakia | Agreement† between the Government of India and the Government of the Czechoslovak Socialist Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 526(E), dated 25-5-1987 | 167 ITR (St.) 23 |
| 5. Denmark | Agreement between the Government of India and Denmark for the avoidance of double taxation of income | GSR 316, dated 9-3-1960 | 38 ITR (St.) 57 |
| 6. Federal Republic of Germany | Agreement between the Government of India and the Government of the Federal Republic of Germany for the avoidance of double taxation of income | GSR 1090, dated 13-9-1960 and supplemented by F. No. 504/1/72 — FTD, dated 2-9-1972 and GSR 680(E), dated 26-8-1985, which has been amended by GSR 609(E), dated 30-6-1987 | 40 ITR (St.) 21 86 ITR (St.) 1 156 ITR (St.) 90 168 ITR (St.) 151 |

† Earlier, there was a *limited* agreement [vide GSR 286(E), dated 3-6-1980: (1980) 124 ITR (St.) 5] which was corrected by GSR 6(E), dated 31-12-1981: (1982) 134 ITR (St.) 155.

| (1) | (2) | (3) | (4) |
|-------------|---|--|---|
| 7. Finland | Convention‡ between the Republic of India and the Republic of Finland for the avoidance of double taxation with respect to taxes on income and on capital | GSR 786(E), dated 20-11-1984 | 152 ITR (St.) 57 |
| 8. France | Agreement between the Government of India and the Government of the French Republic for the avoidance of double taxation in respect of taxes on income | GSR 260, dated 18-2-1970 and corrected by GSR 394, dated 17-3-1971 | 76 ITR (St.) 1 80 ITR (St.) 87 |
| 9. Greece | Agreement between the Government of India and the Government of Greece for the avoidance of double taxation of income | GSR 394, dated 17-3-1967 | 64 ITR (St.) 86 |
| 10. Hungary | Convention between the Government of the Republic of India and the Government of the Hungarian People's Republic for the avoidance of double taxation with respect to taxes on income | GSR 282(E), dated 13-3-1987 | 167 ITR (St.) 4 |
| 11. Italy | Agreement†† between the Government of India and the Government of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 608(E), dated 8-4-1986 and corrected by GSR 346 (E), dated 31-3-1987 | 160 ITR (St.) 25 166 ITR (St.) 140 |
| 12. Japan | Agreement between the Government of India and the Government of Japan for the avoidance of double taxation in respect of taxes on income | GSR 692, dated 13-6-1960 and modified by GSR 1978, dated 16-10-1970 and GSR 671(E), dated 30-11-1974 | 39 ITR (St.) 45 78 ITR (St.) 49 98 ITR (St.) 61 |

‡ Prior to coming into operation of this Convention, there was an agreement [*vide* GSR 41, dated 29-12-1961: (1962) 44 ITR (St.) 2] which was modified, with effect from 1-4-1976, by GSR 584(E), dated 22-10-1979 [(1979) 120 ITR (St.) 22].

†† Earlier limited agreement [*vide* GSR 201(E), dated 16-4-1975: (1975) 99 ITR (St.) 181] has ceased to have effect on coming into force of this new agreement.

| (1) | (2) | (3) | (4) |
|-----------------|--|--|---------------------------------------|
| 13. Kenya | Convention between India and Kenya for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 665(E), dated 20-8-1985 | 157 ITR (St.) 8 |
| 14. Korea | Convention between the Government of the Republic of India and the Government of the Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 1111(E), dated 26-9-1986 | 156 ITR (St.) 191 |
| 15. Libya | Convention between Socialist Peoples' Libyan Arab Jamahiriya and the Government of the Republic of India for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income | GSR 484(E), dated 1-7-1982 | 137 ITR (St.) 27 |
| 16. Malaysia | Agreement between the Government of India and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 167(E), dated 1-4-1977 | 107 ITR (St.) 36 |
| 17. Mauritius | Convention between the Government of the Republic of India and the Government of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains | GSR 920(E), dated 6-12-1983 and corrected by GSR 816 (E), dated 18-12-1984 | 146 ITR (St.) 214 151 ITR (St.) 43 |
| 18. New Zealand | Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 314(E) dated 27-3-1987 | 166 ITR (St.) 90 |

| (1) | (2) | (3) | (4) |
|---------------|---|--|--------------------------------------|
| 19. Norway | Convention† between the Republic of India and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital | GSR 756(E), dated 9-9-1987 | — |
| 20. Pakistan | Agreement‡ between the Government of the Dominion of India and the Government of the Dominion of Pakistan for the avoidance of double taxation of income | GSR 28, dated 10-12-1947 | 16 ITR (St.) 4 |
| 21. Romania† | | | |
| 22. Singapore | Agreement between the Government of the Republic of India and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 22(E), dated 18-1-1982 and corrected by GSR 571 (E), dated 8-9-1982 | 134 ITR (St.) 6 138 ITR (St.) 5 |
| 23. Sri Lanka | Convention* between the Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital | GSR 342(E), dated 19-4-1983 and corrected by GSR 788 (E), dated 20-11-1984 | 143 ITR (St.) 7 152 ITR (St.) 196 |
| 24. Sweden | Agreement between the Government of India and the Royal Government of Sweden for the avoidance of double taxation of income | GSR 112, dated 23-1-1959 | 35 ITR (St.) 17 |

The earlier agreement [*vide* GSR 367, dated 23rd March, 1960: 38 ITR (St.) 75-84] has ceased to have effect in respect to taxes on income to which the present Convention applies.

‡ This agreement was operative upto assessment year 1971-72 [see, Circular No. 127, dated 10-1-1974, reproduced at page 2297 of Vol. 3].
See, (1987) 165 ITR (St.) 318.

The earlier agreement [*vide* S.R.O. 456, dated 6-2-1957: (1957) 31 ITR (St.) 35] has ceased to have effect on coming into operation of the new Convention.

| (1) | (2) | (3) | (4) |
|--------------------------|---|---|--------------------------------------|
| 25. Syrian Arab Republic | Agreement between the Government of the Republic of India and the Government of the Syrian Arab Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 508(E), dated 25-6-1985 | 155 ITR (St.) 93 |
| 26. Tanzania | Agreement between the Government of the Republic of India and the Government of the United Republic of Tanzania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 559(E), dated 16-10-1981 and corrected by GSR 451 (E), dated 8-6-1982 | 132 ITR (St.) 35 137 ITR (St.) 5 |
| 27. Thailand | Agreement between the Government of the Republic of India and the Government of the Kingdom of Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 915(E), dated 27-6-1986 | 161 ITR (St.) 82 |
| 28. U.A.R. | Convention between the Government of India and the Government of the United Arab Republic for the avoidance of double taxation with respect to taxes on income | GSR 2363, dated 30-9-1969 | 74 ITR (St.) 11 |
| 29. U.K. | Convention between the Government of India and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains | GSR 612(E), dated 23-11-1981 and corrected by GSR 772 (E), dated 24-12-1982 | 133 ITR (St.) 34 141 ITR (St.) 35 |

| (1) | (2) | (3) | (4) |
|------------|---|----------------------------|-------------------|
| 30. Zambia | Convention between the Government of the Republic of India and the Government of the Republic of Zambia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | GSR 39(E), dated 18-1-1984 | 146 ITR (St.) 233 |

For the text of limited agreements reference may be made as under:

| <i>Country</i> | <i>Subject-matter</i> | <i>Notification No.</i> | <i>ITR Reference</i> |
|-------------------|--|--|--------------------------------------|
| (1) | (2) | (3) | (4) |
| 1. Afghanistan | Agreement between the Government of India and the Government of Afghanistan for the avoidance of double taxation of income of enterprises operating aircraft | GSR 514(E), dated 30-9-1975 | 101 ITR (St.) 68 |
| 2. Australia | Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation of income derived from international air transport | GSR 850(E), dated 19-11-1983 | 145 ITR (St.) 24 |
| 3. Bulgaria | Agreement between the Government of the Republic of India and the Government of People's Republic of Bulgaria for the avoidance of double taxation in respect of taxes on income derived from carriage of cargo | GSR 184(E), dated 15-4-1977 | 107 ITR (St.) 54 |
| 4. Czechoslovakia | Agreement between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of India for the avoidance of double taxation in respect of taxes on income derived from the freight earnings of Czechoslovak vessels on the basis of reciprocity | GSR 286(E), dated 3-6-1980 and corrected by GSR 6(E), dated 31-12-1981 | 124 ITR (St.) 5 134 ITR (St.) 155 |

| (1) | (2) | (3) | (4) |
|-------------------------------|---|--|--------------------------------------|
| 5. Ethiopia | Agreement between the Government of the Republic of India and the Provisional Military Government of Socialist Ethiopia for the avoidance of double taxation of income of enterprises operating aircraft | GSR 8(E), dated 4-1-1978 and corrected by GSR 159(E), dated 2-3-1978 | 111 ITR (St.) 79 112 ITR (St.) 30 |
| 6. German Democratic Republic | Agreement between the Government of the German Democratic Republic and the Government of the Republic of India for the avoidance of double taxation in respect of taxes on income derived from the freight earnings or profits or both on national cargo carried by the vessels of the respective countries | GSR 282(E), dated 27-4-1979 | 118 ITR (St.) 14 |
| 7. Iran | Agreement between the Government of India and Imperial Government of Iran for the avoidance of double taxation of income of enterprises operating aircraft | GSR 284(E), dated 28-5-1973 | 91 ITR (St.) 31 |
| 8. Kuwait | Agreement between the Government of the Republic of India and the Government of the State of Kuwait for the avoidance of double taxation of income derived from international air transport | GSR 302(E), dated 31-3-1983 and corrected by GSR 792 (E), dated 11-10-1983 | 142 ITR (St.) 85 144 ITR (St.) 54 |
| 9. Lebanon | Agreement between the Government of India and the Government of the Republic of Lebanon for the avoidance of double taxation of income of enterprises operating aircraft | GSR 1552-1553, dated 28-6-1969 | 73 ITR (St.) 24 |

| (1) | (2) | (3) | (4) |
|--------------------------------|--|--|-------------------------------------|
| 10. Oman (Sultanate of) | Agreement between the Government of India and the Government of the Sultanate of Oman for the avoidance of double taxation of income derived from international air transport | GSR 313(E), dated 27-3-1985 | 155 ITR (St.) 20 |
| 11. Romania† | Agreement between the Government of India and the Government of Socialist Republic of Romania for the avoidance of double taxation of income of enterprises operating aircraft and ships in international traffic | GSR 2203, dated 20-12-1968 | 71 ITR (St.) 9 |
| 12. Switzerland | Agreement between the Government of India and the Swiss Federal Council for the avoidance of double taxation of income of enterprises operating aircraft | GSR 761, dated 29-8-1958 | 34 ITR (St.) 62 |
| 13. U.K. | Agreement between the Government of India and the Government of the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion with respect to duties on the estates of deceased persons | S.R.O. 1522, dated 30-6-1956 | 30 ITR (St.) 19 |
| 14. U.S.A. | Agreement between the Government of India and the Government of the United States of America for the avoidance of double taxation of income of enterprises operating aircraft | GSR 899(E), dated 26-11-1976 and corrected by GSR 223 (E), dated 18-4-1980 | 106 ITR (St.) 5 124 ITR (St.) 43 |

† It may be noted that a comprehensive agreement has been entered into between India and Romania, see, (1987) 165 ITR (St.) 318.

| (1) | (2) | (3) | (4) |
|-------------------------|---|---|--------------------------------------|
| 15. U.S.S.R. | Agreement between the Government of the Republic of India and the Government of the Union of Soviet Socialist Republics for the avoidance of double taxation in respect of taxes of income derived from the carriage of cargo | GSR 943(E), dated 23-12-1976 and modified by GSR 419 (E), dated 31-5-1984 | 106 ITR (St.) 15 148 ITR (St.) 45 |
| 16. Yemen Arab Republic | Agreement between the Government of the Republic of India and the Government of Yemen Arab Republic for the avoidance of double taxation of income derived from international air transport | GSR 2(E), dated 1-1-1987 | 165 ITR (St.) 227 |

Page 2304: section 90:

After serial No. 16, listing cases dealing with the Agreement for the Avoidance of Double Taxation between India and Pakistan, *add*,—

- "17. *CIT v Mahalaxmi Sugar Mills Co. Ltd.*, (1986) 160 ITR 920 (SC), reversing serial No. 10 above.
18. *Ganesh Flour Mills Co. Ltd. v CIT*, (1985) 156 ITR 179 (Del).
19. *CIT v Birla Bros. Pr. Ltd.*, (1987) 165 ITR 586 (Cal).
20. *CIT v Birla Bros. Pr. Ltd.*, (1987) 165 ITR 588 (Cal)."

Page 2305: section 90:

After line 7 from top, *add*,—

"(9) Agreement for Avoidance of Double Taxation between India and Federal Republic of Germany:

1. *CIT v Visakhapatnam Port Trust*, (1983) 144 ITR 146 (AP).
- (10) Agreement for Avoidance of Double Taxation between India and Japan:
1. *Citizen Watch Co. Ltd. v IAC*, (1984) 148 ITR 774 (Karn)."

Page 2308: section 91:

After line 9 from top, *add*,—

"In *CIT v Tata Chemicals Ltd.* [(1986) 162 ITR 662 (Bom)], the assessee was held entitled to relief under section 90 and/or section 91 on the gross amount of foreign dividends."

Page 2329: Chapter XI (now omitted):

Chapter XI, containing sections 104 to 109, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Page 2330: section 99 (Old):

Section 99(1)(iv), as it stood for the assessment year 1963-64, has been dealt with in *CIT v Geigy International Ltd.* [(1980) 124 ITR 138 (Bom)], special leave petition dismissed by the Supreme Court: (1983) 144 ITR (St.) 14].

Pages 2332-2334: section 104 (now omitted):

Section 104, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Page 2345: section 104:

At the end of footnote marked*, *add.*— “Reference may also be made to ‘Construction company, whether an industrial company?’ at page 5901, *ante*, in connection with section 2(17).”

Page 2349: section 104:

Before the paragraph titled *Surcharge on income-tax in case of companies*”, *add.*—

“The effective rates of income-tax and surcharge in case of companies for the assessment year 1985-86 are the same as those for assessment year 1984-85.

Effective rates of income-tax in case of companies for assessment years
1986-87 to 1988-89*

| Domestic company | | | Foreign company | |
|---|--|---------------|---|--------------|
| Where the public are substantially interested (widely-held company) | Where the public are not substantially interested (closely-held company) | | Royalties & fees for technical services received on approved agreements | Other income |
| | Trading company or investment company | Other company | | |
| 50% | 60% | 55% | 50% | 65% |

Page 2350: section 104:

After line 16 from top, *add.*—

| | |
|--|-----|
| “1985-86 | 5% |
| 1986-87 | 5% |
| 1987-88 | Nil |
| 1988-89 (if the total income exceeds Rs. 50,000) | 5% |

For assessment year 1986-87, also, surcharge @ 5%. No surcharge for assessment year 1987-88. But, for assessment year 1988-89, surcharge @ 5% is levied if the company's total income exceeds Rs. 50,000.

At the end of line 7 from bottom, *add*,— “In this connection reference may be made to the Companies Deposits (Surcharge on Income-tax) Scheme, 1983 [(1983) 144 ITR (St.) 54-63].

As per section 2(7) of the Finance Act, 1984, for assessment year 1985-86, the reduction in the amount of surcharge is equal to the amount of deposit so made in accordance with the Companies Deposits (Surcharge on Income-tax) Scheme, 1984 [(1985) 151 ITR (St.) 16-24].

As per section 2(7) of the Finance Act, 1985, for assessment year 1986-87, the reduction in the amount of surcharge is equal to the amount of deposit so made in accordance with the Companies Deposits (Surcharge on Income-tax) Scheme, 1985 [(1985) 156 ITR (St.) 44-53].”

Page 2351: section 104:

Before line 7 from bottom, *add*,—

“The question as to whether the shares of the assessee can be regarded as preference shares so as to entitle the assessee to rebate under the provisions of the Finance Act, 1964, and the Finance Act, 1965, involves the interpretation of the provisions of the Financial Corporations Act in the light of the provisions contained in section 85 of the Companies Act, 1956. The question is a debatable one. Hence, where rebate at a higher rate had been allowed to a company on the ground that dividends had been declared on preference shares, such rebate could not be reduced in rectification proceedings on the ground that the shares were not preference shares [*Rajasthan Financial Corporation v CIT*, (1987) 163 ITR 278 (Raj)]. In that case, it was also held that the shares issued by the Rajasthan Financial Corporation could not be said to be preference shares entitled to the higher rate of rebate under the Finance Acts, 1964 and 1965. Also see, *Bihar State Financial Corporation v CIT*, (1976) 102 ITR 517 (Pat).

In *CIT v Godfrey Philips India Ltd.* [(1986) 161 ITR 684 (Bom)], it has been held that interim dividend cannot be treated as dividend declared by the company for the purpose of levying dividend tax.”

Page 2352: section 104:

After line 18 from top, *add*,—

“Rebate in respect of dividend income.—The general rate of income-tax on companies was, as per paragraph D of Part I of the First Schedule to the Finance Act, 1964 (5 of 1964), 25%. However, the proviso to that paragraph provides for a rebate @ 10% on dividends received from a Indian closely-held industrial company by the assessee-company which has not made the prescribed arrangement for the declaration and payments of dividend in India. In *Burmah Oil Co. Ltd. v ITO* [(1987) 165 ITR 264 (Cal)], the petitioner-company was held entitled to such rebate on dividends received from an Indian closely-held industrial company.”

Page 2353: section 104:

After the paragraph titled "*Assessment year from which the surtax is leviable*", add,—

"Assessment year upto which the surtax is leviable.—As a result of amendment of section 4 of the Companies (Profits) Surtax Act, 1964 (7 of 1964), by the Finance Act, 1986 (23 of 1986), the surtax is leviable upto assessment year 1987-88. Thus, the levy of surtax has been discontinued for and from assessment year 1988-89."

Page 2360: sections 104/2(18):

After serial No. (6), add,—

"(7) *The Finance Act, 1987*.—The amendment of section 2(18)(b) (B)(c) by this Act is consequential to the omission, by that Act, of section 108 as constituting part of Chapter XI, with effect from 1st April, 1988."

Page 2369: sections 104/2(18):

After line 13 from top, add,—

"In *CIT v Gaya Sugar Mills Ltd.* [(1986) 160 ITR 933 (Pat)], it has been held, following *Shree Krishna Agency Ltd. v CIT* [(1971) 82 ITR 372 (SC)], that the restraint placed by the High Court during the liquidation proceedings on transfer of shares does not change the character of the widely-held company.

The above Supreme Court decision has also been followed in *CIT v Indo-Nippon Chemical Co. Ltd.* [(1986) 161 ITR 635 (Bom)], holding that the mere existence of an article in the Articles of Association conferring discretion on board of directors to decline to register transfer of shares cannot be said to affect the free transferability of the shares."

Page 2372: sections 104/2(18):

Lines 11-12 from top: The decision in *CIT v Baroda Investment Co. Ltd.* [(1979) 119 ITR 14 (Bom)] has been followed in *CIT v Murphy India Ltd.* [(1985) 156 ITR 451 (Bom)], holding that a widely-held company is covered by the expression 'the public'. Also see, *CIT v India Schering Ltd.*, (1983) 37 CTR (Bom) 201.

Page 2372: sections 104/2(18):

After line 22 from top, add,—

"The word 'public' in section 2(18) cannot be read with a qualifying word 'Indian' [*CIT v Indo-Nippon Chemical Co. Ltd.*, (1986) 161 ITR 635 (Bom)]. In that case, the Japanese shareholders of a Japanese company were held to be members of the 'public'."

Page 2373: sections 104/2(18):

After serial No. (7), add,—

"(8) *CIT v Indian Smelting & Refining Co. Ltd.*, (1987) Taxation 86(3)-9 (Bom) (two banks which were registered shareholders were treated as two persons and not one single person)."

Page 2377: sections 104/2(18):

After serial No. (8), giving illustrative cases whether the company is a widely-held company or not, *add*,—

“(9) In the facts of *CIT v Jaswant Sugar Mills, Ltd.* [(1987) 167 ITR 591 (All)], the company was held to be a closely-held company.”.

Page 2383: section 104:

On the subject *Onus to prove*”, reference may also be made to *CIT v R. McDill & Co. (P) Ltd.*, (1983) 144 ITR 415 (Cal); *CIT v Industry Side (P.) Ltd.*, (1985) 154 ITR 686 (Cal); *General Talkies Ltd. v ITO*, (1986) 162 ITR 136 (Del).

Page 2385: section 104:

At the end of line 10 from top, *add*,— ‘In the facts of *CIT v Investment and Commercial Corporation (P.) Ltd.* [(1984) 150 ITR 639 (Mad)], section 104(2) (iii) was held attracted so as to bar levy of additional super-tax on a closely-held company because 75 per cent. of the shares of the company were held by a charitable institution.”.

Page 2388: section 104:

After serial No. 14, on the subject of commercial profits or not, *add*,—
“15. *CIT v Goodwill India Ltd.*, (1985) 156 ITR 852 (Del).”.

Page 2392: section 104:

After line 21 from top, *add*,—

“In the facts of *CIT v Calcutta Investment Co. Ltd.* [(1987) 65 CTR (Cal) 34], the provisions corresponding to section 104 were held not attracted where the assessee-company had already declared dividend in a sum more than the available surplus in its hands for the purpose of distribution of dividends.”.

Pages 2392-2393: section 104:

On the subject “*Concealed or suppressed income*”, reference may also be made to *Somasundaram Pr. Ltd. v CIT*, (1985) 152 ITR 664 (Karn); *CIT v National Razors & Blades Pr. Ltd.*, (1985) 153 ITR 593 (Cal); *CIT v Industry Side Pr. Ltd.*, (1985) 154 ITR 686 (Cal); *CIT v Bhartia Steel Engg. Co. Pr. Ltd.*, (1986) 162 ITR 20 (Cal); *CIT v Chemical Agents (P.) Ltd.*, (1987) 167 ITR 387 (Cal).

Page 2393: section 104:

At the end of the paragraphs titled “*Capital gains*”, *add*,—

“Capital gains form part of the gross total income of a company and have to be taken into account in arriving at the distributable income [*Cardamom Marketing Co. (Travancore) Ltd. v CIT*, (1986) 158 ITR 621 (Ker); *M. R. M. Plantations Pr. Ltd. v CIT*, (1986) 160 ITR 213 (Mad)].

Also see, *CIT v Sumari Pr. Ltd.*, SLP (Civil) No. 11449 of 1980: (1983) 142 ITR (St.) 8 (SC)."

Page 2394: section 104:

On the subject "*Accumulated losses of earlier years*", reference may also be made to *CIT v United Transport Co. Pr. Ltd.*, (1984) 148 ITR 57 (Bom).

Page 2395: section 104:

At the end of the paragraphs titled "*Tax, in arrears or anticipated*", add,—

"Where, however, there are substantial reserves accumulated, it would be unreasonable to deduct tax arrears pertaining to past years [*Webb's Sales & Services Ltd. v CIT*, (1985) 155 ITR 401 (Karn)]."

Page 2396: section 104:

After line 24 from top, add,—

"In *CIT v Sahibganj Electric Cables Pr. Ltd* [(1983) 144 ITR 422 (Cal)], it has been held that for determining distributable surplus, the tax liability has to be computed on the basis of the additions on account of income from undisclosed sources as sustained by the appellate authority."

Pages 2396-2397: section 104:

On the subject "*Adjustment of earlier years' losses*", reference may also be made to *C. P. Syndicate Pr. Ltd. v CIT*, (1987) 167 ITR 490 (Bom).

Page 2401: section 104:

After the paragraph titled "*Threat of nationalisation*", illustrating irrelevant considerations in the context of the applicability or otherwise of the provisions of section 104, add,—

"Interest on borrowings for non-business purposes—is not deductible while computing the distributable surplus [*Webb's Sales & Services Ltd. v CIT*, (1985) 155 ITR 401 (Karn)]."

Page 2401: section 104:

At the end of the page, add,—

"Question of fact.—The finding of the Tribunal that there was no justification for declaring a lesser dividend is ordinarily one of fact [*United India Roller Flour Mills Ltd. v CIT*, (1985) 155 ITR 367 (Mad)]."

Page 2407: section 104:

At the end of the paragraph titled "*No second order*", add,— "Also see, *CIT v Shib Banerji Properties and Construction Pr. Ltd.*, (1986) 160 ITR 567 (Cal)."

Page 2410: section 104:

After line 9 from top, *add*,—

“Undistributed profits taxed under section 104—distribution of—cannot again be taxed in the hands of the shareholder.—See, at page 5963, *ante*.”.

Pages 2412-2414: section 105 (now omitted):

Section 105, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Pages 2415-2416: section 106 (now omitted):

Section 106, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Page 2418: section 107 (now omitted):

Section 107, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Pages 2418-2420: section 107A (now omitted):

Section 107A, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Page 2420: section 107A:

At the end of the paragraphs titled “*Introduction*”, *add*,—

“In the facts of *General Talkies Ltd. v ITO* [(1986) 162 ITR 136 (Del)], a writ petition was held maintainable against the order passed by the Income-tax Officer under section 104 after a decision has been given by the Board under section 107A. In that case, the orders of the Central Board of Direct Taxes and the Income-tax Officer were quashed.”.

Page 2420: section 108 (now omitted):

Section 108, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Pages 2421-2427: section 109 (now omitted):

Section 109, as constituting part of Chapter XI, has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988.

Page 2433: section 109(ii):

At the end of footnote No. 1, *add*,— “Also see, *CIT v Dongersee Gangji & Sons Pr. Ltd.*, (1984) Taxation 75(1)-15 (Bom).”.

Page 2441: section 109(iii):

After serial No. 47, listing illustrative cases where the amounts in question were held to be “*Reserves*”, *add*,—

“48. *CIT v Gokak Mills Ltd.*, (1983) 142 ITR 525 (Bom).”.

49. *CIT v D. Waldie & Co. (Lead Oxides) Ltd.*, (1983) 142 ITR 614 (Cal).
50. *Addl. CIT v Punjab National Bank*, (1983) 142 ITR 673 (Del).
51. *CIT v Palani Andavar Mills P. Ltd.*, (1983) 144 ITR 138 (Mad).
52. *CIT v Heckett Engg. Co.*, (1984) 145 ITR 514 (SC), affirming serial No. 23 at page 2440 of Vol. 3.
53. *Hindustan Insecticides Ltd. v CIT*, (1984) 149 ITR 372 (Del).
54. *CIT v Placid Ltd.*, (1984) 150 ITR 74 (Cal).
55. *CIT v Western India Plywoods Ltd.*, (1984) 150 ITR 218 (Ker).
56. *CIT v English Electric Co. of India Ltd.*, (1985) 151 ITR 116 (Mad).
57. *Lallubhai Amichand Pr. Ltd. v CIT*, (1985) 151 ITR 212 (Bom).
58. *CIT v New Swadeshi Sugar Mills Ltd.*, (1985) 151 ITR 220 (Bom).
59. *Orient Paper Mills Ltd. v CIT*, (1985) 153 ITR 404 (Cal).
60. *CIT v Punjab National Bank Ltd.*, (1985) 156 ITR 676 (Del).
61. *CIT v Warner Hindustan Ltd.*, (1986) 158 ITR 51 (AP).
62. *CIT v Sijua (Jharriah) Electric Supply Co. Ltd.*, (1986) 158 ITR 332 (Cal).
63. *CIT v Hindustan Lever Ltd.*, (1986) 160 ITR 700 (Bom).
64. *CIT v Ruston & Hornsby India (Pr.) Ltd.*, (1986) 160 ITR 712 (Bom).
65. *CIT v National Rayon Corpn. Ltd.*, (1986) 160 ITR 716 (Bom).
66. *CIT v Laxmi Sugar & Oil Mills Ltd.*, (1986) 161 ITR 168 (SC), affirming serial No. 1 at page 2439 of Vol. 3.
67. *CIT v Elgin Mills Ltd.*, (1986) 161 ITR 733 (SC).
68. *CIT v Saran Engg. Co. Ltd.: CIT v British India Corpn. Ltd.*, (1986) 161 ITR 741 (SC).
69. *CIT v Gramophone Co. of India Ltd.*, (1986) 162 ITR 725 (Cal).
70. *CIT v Peico Electronics & Electricals*, (1987) 166 ITR 299 (Cal).
71. *CIT v Shaw Wallace & Co. Ltd.*, (1987) 167 ITR 27 (Cal).
72. *CIT v Travancore Electro Chemical Industries Ltd.*, (1987) 167 ITR 359 (Ker)."

Page 2442; section 109(iii):

After serial No. 36, listing illustrative cases where the amounts in question were held to be "Provision", add,—

"37. *Shaw Wallace & Co. Ltd. v CIT*, (1983) 143 ITR 885 (Cal).

38. *CIT v Peirce Leslie & Co. Ltd.*, (1984) 147 ITR 157 (Mad).
39. *CIT v Crompton Engg. Co. P. Ltd.*, (1984) 147 ITR 704 (Mad).
40. *CIT v Godfrey Phillips India*, (1984) 150 ITR 202 (Bom).
41. *Goodlass Nerolac Paints Ltd. v CIT*, (1984) 150 ITR 484 (Bom).
42. *United India Fire & General Ins. Co. Ltd. v CIT*, (1985) 153 ITR 81 (Mad).
43. *CIT v National Rayon Corpn. Ltd.*, (1986) 160 ITR 716 (Bom).
44. *CIT v National Rayon Corpn. Ltd.*, (1986) 160 ITR 723 (Bom).
45. *CIT v Elgin Mills Ltd.*, (1986) 161 ITR 733 (SC).
46. *CIT v Saran Engg. Co. Ltd.*: *CIT v British India Corpn. Ltd.*, (1986) 161 ITR 741 (SC).
47. *Richardson & Cruddas Ltd. v CIT*, (1986) 162 ITR 753 (Bom).
48. *CIT v Perfect Pottery Co. Ltd.*, (1987) 163 ITR 493 (MP).

Also see, *CIT v Firestone Tyre & Rubber Co. of India Pr. Ltd.*, (1986) 159 ITR 667 (Bom)."

Page 2443: section 109(iii):

Before line 5 from bottom, *add*,—

"For levying additional income-tax under section 104 in the case of a company having a composite income, consisting, *inter alia*, of an income from manufacturing activities and other income, the Income-tax Officer will have to determine the 'distributable income' as reduced by the amount of dividends 'actually distributed' in the light of the *Explanation* to section 109(iii) (3). Thus, that *Explanation* has relevance to the determination of the amount of additional income-tax payable under section 104. It has no relevance to the determination of statutory dividend required to be declared. That *Explanation* in terms states that apportionment of dividend has to be made only for the purpose of section 104. It, therefore, comes into play when there is a shortfall in the declared dividend. It does not come into operation for determination whether the statutory percentage of dividend has been declared or not [*Hoechst Dyes & Chemicals Ltd. v CIT*, (1985) 151 ITR 713 (Bom)].

In that case, the distributable income of the company [having been assessed at a gross total income of Rs. 1,13,40,162] was worked out at Rs. 29,56,751. That was allocated into two parts—manufacturing activities Rs. 10,93,996 and trading activities Rs. 18,62,755. The company declared a dividend of Rs. 17,00,000. It was held that in respect of Rs. 10,93,996 allocable to manufacturing activities no dividend was required to be declared. Regarding the amount of Rs. 18,62,755 allocable to trading activities, the statutory percentage was 90 per cent. and the minimum dividend

required to be declared worked out at Rs. 16,76,480. Such minimum dividend to be declared was less than the actually declared dividend of Rs. 17,00,000. Therefore, the assessee was not liable to pay any additional income-tax under section 104.”

Page 2457: section 114:

After serial No. 8, listing cases explaining the provisions of section 114, add,—

“9. *CIT v Ushaben Trust*, (1984) Taxation 75(3)-106 (Bom).

10. *H. S. Mukherjee v CIT*, (1986) 161 ITR 846 (Cal).”

Page 2459: section 115 (now omitted):

Before the paragraph titled “*Tax on capital gains in case of companies*”, add,—

“Section 115 has also been amended by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Modification of the provisions relating to long-term capital gains in the case of companies.—33.1 Under the existing provisions in section 115 of the Income-tax Act, long-term capital gains relating to buildings or lands or any rights in buildings or lands are taxed at the rate of 40 per cent. In a case where the assessee is a company in which the public are substantially interested and the total income of the company (exclusive of long-term capital gains) does not exceed Rs. 1 lakh. In the case of other companies, the long-term capital gains relating to buildings or lands or any rights in buildings or lands are subjected to tax at the higher rate of 50 per cent.

33.2 As differential rates of income-tax with reference to the quantum of taxable income of companies have been discontinued by the Finance Act, 1983, this differential in rates in relation to such capital gains has also been discontinued by the Finance Act, 1985, by amending section 115 of the Income-tax Act. Under the amended provision, long-term capital gains relating to buildings or lands or any rights therein will be chargeable to tax at a uniform rate of 50 per cent. in the case of all companies.

33.3 The amendment applies in relation to the assessment year 1986-87 and subsequent years.’

Section 115 omitted.—Section 115 has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. For and from assessment year 1988-89, the substituted section 48 makes provisions for deduction of certain percentages out of the long-term capital gains accruing even to company-assessees.”

Page 2460: section 115 (now omitted):

After line 14 from top, *add*,—

The above rates remained operative upto and including assessment year 1985-86.

For assessment years 1986-87 and 1987-88, the position is as under:—

(1) Long-term capital gains relating to buildings or lands or any rights in buildings or lands are to be charged to tax @ 50%; and

(2) Long-term capital gains relating to other assets are to be charged to tax @ 40%.

For and from assessment year 1988-89, section 115 has been omitted and the provisions of the substituted section 48 are apposite.

Page 2466: section 115A:

After line 14 from top, *add*,—

“III. The Finance Act, 1986.—Section 115A has been amended by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987. The scope and effect of such amendments have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘(xvi) Uniform rate of tax on royalty and fees for technical services in the case of foreign companies.—**34.1** Under the existing provisions of section 115A of the Income-tax Act, the amount of income-tax payable on the gross amount of income by way of royalty or fees for technical services received by a foreign company from an Indian concern or from Government is as under:—

- (i) Twenty per cent. of such income as consists of lump sum consideration for the *transfer outside India* of the technical know-how;
- (ii) Forty per cent. on the balance of such income.

34.2 The basis for the aforesaid flat rate of tax on royalty and fees for technical services was a sample study made by the Income-tax Department, prior to the enactment of these provisions with effect from 1st June, 1976, which showed that the expenses claimed against royalty income (then being taxed at the rate of fifty per cent. on net basis) were around twenty per cent. and hence the flat rate of tax at forty per cent. was determined. In view of the position that the lump sum consideration paid to foreign companies for the supply of technical know-how, drawings, designs and documentations, etc., *abroad* were not taxable prior to 1976, it was decided that such lump sum amount should be taxed at the concessional rate of twenty per cent. of the gross amount of such payments.

34.3 It may be mentioned that when the provisions of section 115A of the Income-tax Act were enacted, it was felt that it might be difficult to segregate the royalty payment relating to the supply of know-how simpliciter from the payment relatable to the technical service. This is because

of the fact that a number of our technical collaboration agreements envisage composite situations where the collaborator tenders various types of services of technical nature apart from making available patents and know-how. It had been apprehended at that time that a higher rate of tax on royalty might result in inflating fees for technical services. Hence a uniform rate of tax of forty per cent. for both royalty and technical services fees was prescribed. It may appear to be ironical that with the passage of time, the lower rate of tax at 20 per cent. applicable to lump sum payments for supply of technical know-how abroad has given rise to the problems which had been apprehended relating to royalty *vis-a-vis* fees for technical services. It has been found that the foreign collaborators tend to take more by way of lump sum which attracts lower rate of tax than by way of royalty and in some cases payments for grant of licence for use in India of technical process are camouflaged as lump sum payments abroad. This is also not in the interest of absorption and adaptation of imported technology. An agreement for transfer of technology in India is more conducive, when compared to an agreement for lump sum payment, to self-reliance in our industrial production. Further, the differential rates of tax have been found to be open to abuse and have also given rise to litigation. Hence, by an amendment of section 115A of the Income-tax Act, the tax rate on lump sum payments has been increased from twenty per cent. to thirty per cent. and the tax rate on royalty payments and fees for technical services has been reduced from forty per cent. to thirty per cent. This will result also in reducing the cost of technology to Indian concerns thus enabling them to opt for the latest rather than intermediate technology and will encourage the absorption and adaptation of imported technology.

34.4 The amendment will apply in relation to the assessment year 1987-88 and subsequent years.’

Departmental circular.—The following departmental circular is also relevant to section 115A:—

‘Rate of tax applicable in respect of interest income in the case of foreign companies—Clarification regarding.—Under section 115A(1) of the Income-tax Act, 1961, income by way of interest received by a foreign company from Government or an Indian concern on moneys borrowed or debt incurred by the Government or the Indian concern in foreign currency, is chargeable to tax at the rate of 25 per cent.

2. Overseas corporate bodies with specified NRI shareholdings are allowed to invest their moneys in Non-Resident (External) Accounts as well as FCNR accounts. They are also allowed to invest in deposits of public limited companies.

3. A question has been raised regarding the rate of tax applicable in regard to the income by way of interest from such investment income. In this connection, it is clarified that if the overseas corporate body is a foreign

company and if the investment (in NRE & FCNR Accounts or in deposits of public limited companies) is made by way of remittance in foreign currency, then the provisions of section 115A(1)(ia) would apply and the rate of tax on the income by way of interest would be 25 per cent. of gross amount of such interest. For this purpose, the income by way of interest shall be computed without allowing any deduction in respect of any expenditure or allowance.

4. The contents of this letter may be brought to the notice of all the officers working in your charge.' [*Circular No. 473, dated October 31, 1986.*]

Page 2468: new section 115BB:

At the end of the page, *add*,—

"New section 115BB.—A new section 115BB, making special provision for tax on winnings from lotteries, crossword puzzles, races including horse races, card games and any other games of any sort or gambling or betting of any form or nature whatsoever, has been inserted by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987. The scope and effect of such insertion have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(xiii) Provision of a flat rate of tax on winnings from lotteries, crossword puzzles, races, including horse races, etc.—31.1 Under the existing provisions, any income by way of winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever is chargeable to tax under the head "Income from other sources" along with the other income of an assessee. By inserting a new section 115BB in the Income-tax Act, it has been provided that any income of a casual and non-recurring nature of the type referred to above, shall be charged to income-tax at a flat rate of 40 per cent. This provision will, however, not apply to income from the activity of owning and maintaining race horses. For this purpose, a new sub-section has been added to section 58 to provide that no deduction shall be allowed in respect of any expenditure or allowance in computing the income from the aforesaid sources. What has to be borne in mind is that apart from the general exemption of Rs. 5,000 under section 10(3), no further allowances or deductions are admissible against the gross winnings except in cases where there is a diversion by overriding title as in the case of certain lotteries where a certain percentage has to be foregone to the Government/agency conducting the lotteries. Consequential amendment has also been made in section 197(1)(a) of the Income-tax Act.

31.2 These amendments will apply in relation to the assessment year 1987-88 and subsequent years.'".

Page 2473: section 115E:

Before the text of section 115F, *add*,—

"Section 115E has been amended by the Finance Act, 1985 (32 of 1985),

with effect from 1st April, 1986. The scope and effect of such amendments have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

*'Modification of the provisions relating to certain incomes of non-residents.—*34.1 Under the existing provisions of section 115E of the Income-tax Act, in the case of a "non-resident Indian", income-tax is payable at the rate of twenty per cent. of the "investment income" and income by way of long-term capital gains. The income-tax so calculated is increased by a surcharge at the rate of twelve and a half per cent. of such income-tax.

34.2 In view of the abolition of surcharge on income-tax in respect of all categories of non-corporate taxpayers, the Finance Act, 1985, had deleted the requirement of payment of surcharge on income-tax by non-resident Indians under the aforesaid provision.

34.3 The amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.'".

Page 2476: new section 115J:

At the end of the page, *add*,—

"New section 115J.—A new Chapter XII-B, containing section 115J, has been inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. That new section makes provision for levy of minimum tax on book profits of certain companies. The scope and effect of these provisions have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

*'New provisions to levy minimum tax on "book profit" of certain companies.—*36.1 It is an accepted canon of taxation to levy tax on the basis of ability to pay. However, as a result of various tax concessions and incentives certain companies making huge profits and also declaring substantial dividends, have been managing their affairs in such a way as to avoid payment of income-tax.

36.2 Accordingly, as a measure of equity, section 115J has been introduced by the Finance Act, 1987. By virtue of the new provisions, in the case of a company whose total income as computed under the provisions of the Income-tax Act is less than 30% of the book profit computed under the section, the total income chargeable to tax will be 30% of the book profit as computed. For the purposes of section 115J, book profits will be the net profit as shown in the profit and loss account prepared in accordance with the provisions of the Sixth Schedule to the Companies Act, 1956, after certain adjustments. The net profit as above will be increased by income-tax paid or payable or the provision thereof, amount carried to any reserve, provision made for liabilities other than ascertained liabilities provision for losses of subsidiary companies, etc., if the amounts are debited to the profit and loss account. Liabilities relating to expenditure which has

been incurred or which has accrued in respect of expenses which are otherwise deductible in computing income will not be added back. The amount so arrived at is to be reduced by—

- (i) amounts withdrawn from reserves, if any, such amount is credited to the profit and loss account;
- (ii) the amount of income to which any of the provisions of Chapter III applies, if any, such amount is credited to the profit and loss account; and
- (iii) the amount of any brought forward losses or unabsorbed depreciation, whichever is less, as computed under the provisions of section 205(1)(b) of the Companies Act, 1956, for the purposes of declaration of dividends. Section 205 of the Companies Act requires every company desirous of declaring dividend to provide for depreciation for the relevant accounting year. Further, the company is required under section 205 to set-off against the profit of the relevant accounting year, the depreciation debited to the profit and loss account of any earlier year(s) or loss, whichever is less.

36.3 Section 115J, therefore, involves two processes. *Firstly*, an assessing authority has to determine the income of the company under the provisions of the Income-tax Act. *Secondly*, the book profit is to be worked out in accordance with the *Explanation* to section 115J(1) and it is to be seen whether the income determined under the first process is less than 30% of the book profit. Section 115J would be invoked if the income determined under the first process is less than 30% of the book profit. The *Explanation* to sub-section (1) of section 115J gives the definition of the "books profit" by incorporating the requirement of section 205 of the Companies Act in the computation of the book profit. Brought forward losses or unabsorbed depreciation, whichever is less, would be reduced in arriving at the book profits. Sub-section (2), however, provides that the application of this provision would not affect the carry forward of unabsorbed depreciation, unabsorbed investment allowance, business losses to the extent not set-off, and deduction under section 80J to the extent not set-off as computed under the Income-tax Act.

36.4 In the case of a tea company where income is derived from the sale of tea grown and manufactured by the seller, only 40% of such income is liable to tax under rule 8 of the Income-tax Rules, 1962. 60% of the income, which is disregarded for the purposes of taxation is considered to be agricultural income and is, therefore, exempt under the provisions of Chapter III. The net profit determined in accordance with the Sixth Schedule to the Companies Act, 1956, has to be adjusted, *inter alia*, in accordance with clause (f) and clause (ii) of the *Explanation* to section 115J(1). In the case of the tea companies, the book profit should be computed by making all the adjustments referred to in the *Explanation*. However, no adjustment in respect of clause (f) and clause (ii) of the *Explanation* is to

be made for the agricultural income earned by tea companies from tea business. 40% of the adjusted amount arrived at in this manner will be the book profit of the tea company in accordance with rule 8 of the Income-tax Rules.

36.5 The following examples illustrate as to how the amended provisions relating to the new section will be applied:—

New Companies

| Book profits for the purposes of the Companies Act, 1956 | | Profit under the Income-tax Act | |
|---|---------------|---------------------------------------|---------------|
| (1) | | (2) | |
| Year 1984 | | | |
| | Rs. | | Rs. |
| Loss excluding depreciation .. | 3,00,000 | Loss excluding depreciation .. | 80,000 |
| Depreciation .. | 1,00,000 | Depreciation .. | 4,00,000 |
| <hr/> | | | |
| Year 1985 | | | |
| | Rs. | | Rs. |
| Profit before depreciation .. | 5,00,000 | Profit before depreciation .. | 5,00,000 |
| Less depreciation as per books .. | 2,00,000 | Less depreciation .. | 4,00,000 |
| | <hr/> | | <hr/> |
| | 3,00,000 | | 1,00,000 |
| Less deduction u/s 205(2) for the year 1984 .. | 1,00,000 | Less business loss for 1984 .. | 80,000 |
| | <hr/> | | <hr/> |
| | 2,00,000 | | 20,000 |
| C.F. Business loss 1984 .. | 3,00,000 | Less unabsorbed depreciation .. | 20,000 |
| | | | <hr/> |
| | | | Nil |
| | | C.F. unabsorbed depreciation 1985 .. | 3,80,000 |
| <hr/> | | | |
| Year 1986 | | | |
| Net loss as per books before depreciation .. | (—) 10,00,000 | Business loss .. | (—) 10,00,000 |
| Depreciation .. | 2,00,000 | Add depreciation as per I.T. Rules .. | (—) 4,00,000 |

| (1) | | (2) |
|---|---------------|--|
| | Rs. | Rs. |
| Business loss to be carried forward | (—) 10,00,000 | |
| Unabsorbed depreciation to be carried forward | (—) 2,00,000 | |
| Year 1987 | | |
| Net profit | .. 10,00,000 | Profit before depreciation |
| Book depreciation | .. 2,00,000 | .. 10,00,000 |
| | | Less depreciation as per I.T. Rules |
| | | .. 8,00,000 |
| | | <hr/> |
| | | 2,00,000 |
| | | Less carried forward business loss for 1986 to the extent adjusted |
| | | .. 2,00,000 |
| | | <hr/> |
| | | Assessed income |
| | | Nil |

Application of section 115J

| | | | |
|--------------------------------------|----|----|-----------|
| | | | Rs. |
| Profit before depreciation | .. | .. | 10,00,000 |
| Less book depreciation | .. | .. | 2,00,000 |
| | | | <hr/> |
| | | | 8,00,000 |
| Less deduction under section 205(2) | .. | .. | 2,00,000 |
| | | | <hr/> |
| | | | 6,00,000 |
| Out of the amount whichever is less: | | | |
| 1985: Business loss | .. | .. | 3,00,000 |
| 1986: Business loss | .. | .. | 10,00,000 |
| | | | <hr/> |
| Total loss | .. | .. | 13,00,000 |
| 1986: Depreciation | .. | .. | 2,00,000 |

Assessable income 30% of Rs. 6 lakhs, i.e., Rs. 1.8 lakhs.

Amount to be carried forward as per sub-section (2) of section 115J:-

| | | |
|-------------------------------|----|----------|
| 1984: Unabsorbed depreciation | .. | 3,80,000 |
| 1986: Business loss | .. | 8,00,000 |
| Unabsorbed depreciation | .. | 4,00,000 |

36.6 These amendments will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to assessment year 1988-89 and subsequent years.'".

Page 2482: section 119:

At the end of the paragraph titled "*Power when coupled with a duty*", add,—

"In *Modern Chemical Works v V. B. Kulkarni* [(1985) 154 ITR 230 (Bom)], the assessee, who failed to claim deduction under section 80J, filed an application before the Board requesting them to issue directions to the Income-tax Officer under section 119(2)(b) to reopen the assessment and grant the deduction. The Board did not grant hearing to the assessee and rejected the application without giving reasons. It was held that the Board should have passed a well-reasoned order after giving a hearing."

Page 2488: section 119:

In lines 10 and 11 from top, after "100 ITR 413, 422 (Karn)", add,—
"; *CIT v O. M. S. S. Sankaralinga Nadar & Co.*, (1984) 147 ITR 332, 337 (Mad); *CIT v Balbhadradas Bangur*, (1984) 148 ITR 149 (Cal)" [holding that a departmental circular binds the income-tax authorities and not the Tribunal or the High Court].

Page 2489: section 119:

At the end of the paragraph titled "*Benevolent circulars are binding on the authorities*", add,—
"Also see, *CIT v V. H. Sheth*, (1984) 148 ITR 169 (Bom); *Parekh Bros. v CIT*, (1984) 150 ITR 105 (Ker); *Dattatraya Gopal Shette v CIT*, (1984) 150 ITR 460 (Bom); *Acropolymers (P.) Ltd. v CIT*, (1985) 151 ITR 158 (Punj); *Bharat Vijay Mills Ltd. v ITO*; *Gurjagrāvures Pr. Ltd. v ITO*, (1985) 154 ITR 786 (Guj); *CIT v T. V. Ramanaiah & Sons*, (1986) 157 ITR 300 (AP); *CIT v Sriram Agrawal*, (1986) 161 ITR 302 (Pat); *CIT v Tata Robins Frazer Ltd.*, (1987) 163 ITR 886 (Pat); *CIT v Sarbamangala Devi*, (1987) 163 ITR 898 (Pat); *B. M. Marappa v IAC*, (1986) 160 ITR 642 (Karn); *CIT v Punalur Paper Mills Ltd.*, (1987) 64 CTR (Ker) 211."

Page 2491: section 119:

At the end of the paragraphs titled "*Withdrawal of circulars—effect of*", add,—

"A circular giving concession can be withdrawn only prospectively [*State Bank of Travancore v CIT*, (1986) 158 ITR 102 (SC); *CIT v N. T. Rama Rao (HUF)*, (1987) 163 ITR 453 (AP)].

A circular, which is in force on the first day of the relevant assessment year, is to govern the assessment relating to that assessment year. The withdrawal and/or modification of that circular after the first day of that assessment year is of no consequence in relation to that assessment year [see,

CIT v N. T. Ramarao (HUF), (1987) 163 ITR 453 (AP); *CIT v Jyothi Pictures*, (1987) 34 Taxman 395 (AP)].”.

Pages 2491-2492: section 119:

On the subject “*Administrative instructions cannot override the statutory provisions*”, reference may also be made to *State Bank of Travancore v CIT*, (1986) 158 ITR 102 (SC); *ITO v A. V. Thomas & Co.*, (1986) 160 ITR 818 (Ker); *CIT v Sahney Steel & Press Works Ltd.*, (1985) 152 ITR 39, 63 (AP); *Ram Co. Coke Industries v CST*, (1985) Tax LR 2932 (All); *T. M. Mohan v Addl. Ag ITO*, (1987) 168 ITR 384 (Karn).

Page 2492: section 119:

After line 16 from top, *add*,—

“Circulars contradicting judicially decided matters are not binding.—While a circular of the Board will be binding upon an Income-tax Officer in matters relating to the general interpretation of any provisions of the statute, the circular cannot override judicial decisions rendered on the statute. In fields which are covered by judicial decisions, the circular will not be conclusive even so far as the Income-tax Officer is concerned [*Geep Industrial Syndicate Ltd. v CBDT*, (1987) 166 ITR 88, 92 (Del)].”.

Page 2492: section 119:

At the end of the paragraph titled “*Letter of the Ministry of Finance—force of*”, *add*,—

“A circular and/or a press-note issued by the Ministry of Law or the Ministry of Finance, not having been issued under the provisions of the Act, does not stand on the same footing as a circular of the Board issued under section 119 of the 1961 Act [*CIT v Autofin Ltd.*, (1985) 151 ITR 741 (AP)].”.

Pages 2492-2493: section 119:

At the end of the paragraphs titled “*Orders, instructions and directions—what they contemplate?*”, *add*,—

“A mere letter or clarification of the Board in reply to a communication from the assessee or any other person, who is not an authority within the meaning of section 116, cannot be regarded as a circular coming within the ambit of section 119 [*CIT v Kerala Financial Corpn.*, (1985) 155 ITR 228 (Ker); *CIT v Kerala Financial Corpn. Ltd.*, (1985) 155 ITR 246 (Ker)].

The proviso to section 119(1) provides that no order, etc., can be issued by the Board so as to interfere with a particular assessment or the judicial discretion of the appellate authority. An order issued by the Board in such cases is liable to be quashed if challenged in writ proceedings [*Citizen Watch Co. Ltd. v IAC*, (1984) 148 ITR 774 (Karn)].

1922 Act circular.—A circular issued under the 1922 Act provisions is to be deemed to have been issued under the 1961 Act to the extent such circular is not inconsistent with the provisions of the 1961 Act [*Krishi Utpanna Bazar Samiti v ITO*, (1986) 158 ITR 742 (Bom); *CIT v Ajit Spices: CIT v R. Vallabhadas & Sons*, (1987) 165 ITR 755 (Ker)]. In this connection, the provisions of section 297(2)(k) are apposite.

Writ.—In *Mrs. Pushpa Kalyanmal Singhvi v Union of India* [(1987) 64 CTR (Bom) 162], a writ petition has been held to be maintainable for challenging the basis, both legal and ethical, of the amnesty scheme introduced by CBDT's circulars.

In *Pune District Urban Co-operative Banks Association v Union of India* [SLP (Civil) No. 3318 of 1987: (1987) 167 ITR (St.) 62], their Lordships of the Supreme Court have dismissed a special leave petition by the petitioner, a federation of rural co-operative banks in a certain area, to appeal against the judgment dated 23-1-1987 of the Bombay High Court in W.P.No. 268 of 1987, dismissing a writ petition filed by the petitioner challenging the validity of a circular letter issued by the Assistant Director of Inspection (Survey) to all rural co-operative banks in the area calling upon them to supply certain confidential information in respect of their depositors and creditors.”.

Page 2497: section 119:

After serial No. VII, extracting orders under section 119(2), *add*,—

“VIII. *Time-limit under section 154(7) to be overlooked or condoned where the assessee applies u/s. 80-K for rectification of the mistake of non-grant of 80-K relief.*—‘Assessees deriving profits and gains from newly established industrial undertakings or ships or hotel business, are entitled to tax relief provided under section 80J of the Income-tax Act, 1961 (section 84 upto the assessment year 1967-68). When such assessee happens to be companies which declare dividend out of such profits, the share-holders too become entitled to tax relief under section 80-K (section 85 upto the assessment year 1967-68).

2. The Board have noticed certain cases where assessee deriving dividend income attributable to the profits and gains from new industrial undertakings or ships or hotel business were denied relief under section 80-K (formerly section 85) for the failure of such persons to produce proper certificates from the concerned companies indicating the percentage of the tax-free profits as required under rule 31(4) of the Income-tax Rules, 1962. This mostly happened when the companies declared dividend even before the Income-tax Officer assessing them had determined what percentage of their profits and gains were exempt from tax under section 80-J (formerly section 84).

3. When in the type of cases mentioned in paragraph 2, the share-holders are able to produce the necessary certificates, the time-limit for taking

action under section 154 for rectifying the mistake as one apparent from records is often over and they cannot be allowed the relief due to them. For removing this hardship, the Board have, in exercise of their powers under clause (b) of sub-section (2) of section 119, decided that where assessee claim relief under section 80-K due to them by filing applications under section 154 duly supported by the relevant certificates issued by the companies specifying the percentage of dividends which are free of tax, the concerned Income-tax Officers shall admit such applications and dispose these of on merits and in accordance with law, even if such applications are filed after the expiry of time-limit specified under sub-section (7) of section 154. Where any such applications have already been rejected and the assessee file fresh applications, the same may also be treated on par with the applications which may either be pending or received after the issue of this circular.

4. The Board desire that any appeals or references pending on the point at issue may be withdrawn.' [Circular No. 79 (F. No. 245/7/72 A & PAC), dated 25th February, 1972.]

IX. Condonation of delay in filing refund claims in certain cases—Order issued by the Board to subordinate authorities under section 119(2)(b) of the Income-tax Act, 1961.—'In exercise of the powers conferred by clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby order that, in all cases where an otherwise valid refund claim under section 237 of the Income-tax Act, 1961, is filed by an assessee after the expiry of the statutory time-limit as prescribed under section 239 of the Act, the Income-tax Officer having jurisdiction over the case, may admit the said refund claim and dispose of the same on merits and in accordance with law provided the following conditions are satisfied: .

- (i) the refund arising as a result of tax deducted at source in respect of the assessment year under the provisions of sections 192, 193, 194, 194A, 194B, 194D and 195 does not exceed Rs. 1,000;
- (ii) the returned income is not a loss where the assessee claims the benefit of carry forward of the loss;
- (iii) the refund claimed is not supplementary in nature, e.g., a claim for additional amount of refund after the completion of the original assessment for the same assessment year;
- (iv) the income of the assessee is not assessable in the hands of any other person under any provisions of the Act.

2. This order will be effective from 2nd April, 1984.' [Notification No. F. No. 225/105/83/IT (A-II), dated March 24, 1984.]

The following circular is also relevant:—

'Order u/s. 119(2)(b) of the Income-tax Act, 1961—Condonation of delay in filing refund claims—Authorisation to the Income-tax Officer.—

Attention is invited to Board's order u/s. 119(2)(b) of the Income-tax Act (F. No. 225/105/83-ITA.II), dated March 24, 1984, wherein the Board, in exercise of the powers conferred by clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961, have condoned the delay in filing returns of income in cases where an otherwise valid refund claim u/s. 237 of the Income-tax Act is filed by the assessee after the expiry of the statutory time-limit u/s. 239 of the Income-tax Act, and the Income-tax Officer, having jurisdiction over the case, has been empowered to admit the said claim and dispose of the same on merits and in accordance with law provided the following conditions are satisfied:

- (i) the refund arising as a result of tax deducted at source in respect of the assessment year under the provisions of sections 192, 193, 194, 194A, 194B, 194D and 195 does not exceed Rs. 1,000;
- (ii) the returned income is not a loss where the assessee claims the benefit of carry forward of loss;
- (iii) the refund claimed is not supplementary in nature, e.g., a claim for additional amount of refund after the completion of the original assessment for the same assessment year;
- (iv) the income of the assessee is not assessable in the hands of any other person under any provisions of the Act.

2. This order has been made effective from April 2, 1984.

3. You are requested to bring the contents of the aforesaid order, which has already been communicated to you, *vide* Board's endorsement of even number, dated March 24, 1984, to the notice of all the Officers working under you. It is also requested that this authorisation may be given wide publicity.' [Circular No. 379, dated 10th April, 1984.]

X. Order under section 119(2)(a)—no penalty under section 271(1)(a)/(b) or 273 where maximum penalty does not exceed Rs. 500.—'In exercise of the powers conferred by clause (a) of sub-section (2) of section 119 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby directs that the Income-tax Officer, Inspecting Assistant Commissioner of Income-tax (Assessment) shall not initiate any proceeding for imposition of a penalty for an offence under clause (a) or clause (b) of sub-section (1) of section 271 or under section 273 in respect of any assessment year in a case where the maximum penalty imposable under the relevant clause does not exceed five hundred rupees.

2. This order shall come into force on the 3rd day of June, 1985.' [F. No. 284/64/77-IT (Inv.), dated 3-6-1985.]

XI. 'In exercise of the powers conferred by clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby authorise the Income-tax Officer having jurisdiction over a person to admit an application or claim for refund made by such person after the expiry of the period specified under the Income-tax Act, 1961, for making such an application or claim and dispose of the same on

merits and in accordance with law provided the following conditions are satisfied:

- (i) the amount of refund arising as a result of tax deducted at source under the provisions of section 194C in respect of the assessment year does not exceed a sum of Rs. 1,000;
- (ii) the returned income is not a loss where the assessee claims the benefit of carry forward and set off of the loss;
- (iii) the refund claimed is not supplementary in nature, e.g., a claim for additional amount of refund after the completion of the original assessment for the same assessment year; and
- (iv) the income of the assessee is not assessable in the hands of any other person under any provisions of the act.

2. This order will be effective from 1st January, 1986.' [F. No. 225/105/83-ITA. II dated 31-12-1985.]

The following circular is also relevant:—

'Condonation of delay in filing refund claims in certain cases of contractors/sub-contractors—Order under section 119(2)(b)—Authorisation of the Income-tax Officers.—Attention is invited to Board's order [F. No. 225/105/83-IT(A-II)], dated 24-3-1984 whereby the Board, in exercise of the powers conferred by clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961, authorised the ITOs to admit belated refund claims under section 237 of the Income-tax Act, 1961 in respect of amount up to Rs. 1,000 in cases where refund arose as a result of tax deducted at source under sections 192 to 194, section 194A and section 195 provided the conditions laid down in the said order were fulfilled. This order was effective from 2-4-1984. The order, however, did not cover cases where refunds arose as a result of tax deducted at source under section 194C of the Income-tax Act, i.e., the case of contractors and sub-contractors.

2. With a view to avoiding hardship to the taxpayers, the Board vide their order [F. No. 225/105/83-IT(A-II)], dated 31-12-1985 have further authorised the ITOs to admit a belated application/claim for refund in cases where refund arises as a result of tax deducted at source under section 194C provided the following conditions are satisfied:—

- (i) the amount of refund arising as a result of tax deducted at source under the provisions of section 194C, in respect of the assessment year does not exceed Rs. 1,000;
- (ii) the returned income is not a loss where the assessee claims benefit of carry forward and set off of loss;
- (iii) the refund claim is not supplementary in nature, e.g., a claim for additional amount of refund after the completion of the original assessment for the same assessment year; and
- (iv) the income of the assessee is not assessable in the hands of any other person under any provisions of the Act.

3. This order will be effective from 1-1-1986.' [Circular No. 446, dated 31st December, 1985.]

XII. 'In exercise of the powers conferred by clause (a) of sub-section (2) of section 119 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby directs that the Income-tax Officer and the Inspecting Assistant Commissioner of Income-tax shall not initiate any proceeding for imposition of a penalty on a person or impose penalty on him for an offence under clause (a) or clause (c) of sub-section (1) of section 271 or section 273 in respect of any assessment year up to and including assessment year 1985-86† in a case, if he is satisfied that such person:

- (a) has prior to the detection by the Income-tax Officer, or, as the case may be, the Inspecting Assistant Commissioner of Income-tax, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made between the 15th day of November, 1985, and the 31st day of March, 1986†, a full and true disclosure of such income;
- (b) has, on or before the 31st March, 1986†, paid the tax on the income disclosed; and
- (c) has co-operated in any enquiry relating to the assessment of his income.

2. This order shall come into force on the 17th day of February, 1986.' [F. No. 281/8/86-IT(INV. III), dated 14-2-1986.]".

Page 2523: section 124:

After line-3 from top, *add*,—

"In *Mahalliram Ramniranjan Das v CIT* [(1985) 156 ITR 885 (Pat)], the assessee filed a petition objecting the jurisdiction of the Income-tax Officer who proceeded with the case of the assessee. Without referring the matter to the Commissioner, that Income-tax Officer himself completed the assessment. It was, on facts, held that it was not a case of total lack of jurisdiction.

Lack of jurisdiction u/s. 124 vis-a-vis revision u/s. 263.—It is true that when a power has been vested under section 124 in the Commissioner to direct different Income-tax Officers to perform their functions in respect of different areas or different classes of persons, they are bound by such directions. But, merely because there has been a contravention on that account, the power under section 263(1) cannot be exercised by the Com-

† This has been extended up to assessment year 1986-87, as per circular No. 472, dated 15th October, 1986 [(1986) 162 ITR (St.) 17]. But, the above order does not seem to have been amended accordingly.

† This has been extended up to 31-3-1987, as per circular No. 472, dated 15th October, 1986.

missioner unless he is also satisfied that the assessment order in question is prejudicial to the interests of the Revenue. He has to point out, while cancelling such orders, on materials on record as to how the order is prejudicial to the interests of the Revenue [*CIT v Shantilal Agarwalla*, (1983) 142 ITR 778, 786 (Pat)].”.

Page 2525: section 124:

In line 4 from top, after “AIR 1979 Punj 116”, add,—“; *Sunder Dass v Ram Parkash*, AIR 1977 SC 1201; *Jiviben Lavji Raganath v Jadavji Devshanker*, AIR 1978 Guj 32; *Dr. Madhukar Trimbak Gore v Vasant Ramkrishna Kolhatkar*, AIR 1983 Bom 277” [holding that the invalidity of a decree can be set up in an execution proceeding if the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it].

Page 2525: section 124:

Before the paragraph titled “*Absolute powers in matters of assessment*”, add,—

“In the facts of *T. A. George v Agri ITO* [(1984) Tax LR 514 (Ker)], it has been held that an assessee is entitled to challenge the recovery proceedings on the ground that the collection of tax should only be in accordance with law.

Authority to tax—scope of.—Investment of authority to tax involves authority to tax transactions which in exercise of his authority the taxing officer regards as taxable, and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable [*Titaghur Paper Mills Co. Ltd. v State of Orissa*; *Pinaki Sengupta v State of Orissa*, (1983) 142 ITR 663, 670 (SC)].”.

Page 2525: section 124:

At the end of the paragraph titled “*Absolute powers in matters of assessment*”, add,—

“The Income-tax Officer, in his own sphere, is a tribunal of plenary jurisdiction subject to no other control and limitations save those which are enacted in the income-tax code. It stands to reason, therefore, that the investigations and inquiries launched by him are not subject to the jurisdiction of ordinary courts. Indeed, there is a specific provision in the Income-tax Act which forbids courts of law from interfering with the Income-tax Officer’s jurisdiction to assess: *vide* section 293. It is, therefore, not correct to regard a decree of court as a self-propelled or a self-acting bar against the powers of inquiry and investigation conferred by the statute on the Income-tax Officer. Nor can it be supposed that when the Income-tax Officer pursues his investigation into the reality of a transaction which has relevance to the assessment proceedings before him, he commits an act of disrespect to a court of law, by not accepting an adjudication by that court on the self-same transaction in a litigation between the taxpayer and

a third party. In a broad sense, no doubt, every one must respect the decisions of courts and no one can interfere with the working of courts. The law relating to contempt has developed only on this broad basis. But to say that the Income-tax Officer is bound to respect a court decree and he cannot proceed with his allotted task of investigating a fact relevant for the assessment of an assessee in his charge cannot be accepted even on the basis that a decree of court has to be shown the respect it deserves. The Income-tax Officer has a job to do under the Income-tax Act and he cannot be prevented from doing it because a court might have passed a decree in a litigation between the assessee and a third party. The two proceedings, namely, an action at law before a court and a proceeding for assessment, are thus entirely different. One is adjudicatory, the other is investigative or inquisitorial [*V. Datchinamurthy v Asst. Director of Inspection*, (1984) 149 ITR 341, 362, 363 (Mad)].

Power to decide question of title.—As laid down in the case of *Keshardeo Chamria, In re* [(1937) 5 ITR 246 (Cal)], which has been followed subsequently in *Mahamaya Dassi v CIT* [(1980) 126 ITR 748 (Cal)], the Income-tax Officer has plenary power to decide the title of any property for the purpose of assessment in accordance with law [*Champa Properties Pr. Ltd. v CIT*, (1987) 166 ITR 367, 376 (Cal)].”.

Page 2541: section 125A:

After line 2 from top, *add*,—

“Notification u/s. 125A not to enure under the WT Act.—A notification issued under section 125A(1) of the 1961 Act is only for authorising the Inspecting Assistant Commissioner to have concurrent jurisdiction with the Income-tax Officer so far as the powers exercisable under the 1961 Act are concerned. Such a notification cannot be taken to include the powers exercisable under the Wealth-tax Act, 1957 [*CWT v B. Nathmal Vaid*, (1985) 154 ITR 186 (Mad)].”.

Page 2545: section 127:

At the end of the paragraph titled “*Transfer possible only under orders of the proper authority*”, *add*,—

“Only the Board has power to transfer a case from one State to another State [see, *Kalooram Govindram v ITO*, SLP (Civil) No. 10178 of 1983: (1987) 166 ITR (St.) 109 (SC)].”.

Pages 2548-2549: section 127:

On the subject of necessity of giving reasonable opportunity of being heard, reference may also be made to *Shantilal Hiralal & Co. v ITO*, (1985) 152 ITR 236 (Bom); *Mangal Chand & Sons v CBDT*, (1985) 155 ITR 344 (Cal).

Page 2551: section 127:

After line 9 from top, *add*,—

“In *Shivajirao Angre v CIT* [(1986) 158 ITR 162 (MP)], the transfer order used the words ‘detailed and co-ordinated investigation’. It was held that these words were very vague and general and did not constitute a valid reason for the transfer of the case.”.

Page 2551: section 127:

On the subject “*Communication of the recorded reasons essential*”, reference may also be made to *Shivajirao Angre v CIT*, (1986) 158 ITR 162 (MP); *Manoj Didwania v Union of India*, (1987) 167 ITR 177 (Del).”.

Page 2551: section 127:

At the end of the paragraph titled “*Need for investigation to dominate*”, *add*,—

“In *Maheshwari Lime Works v CIT* [(1984) 147 ITR 804 (MP)], the transfer effected to facilitate co-ordinated and detailed investigation was held justified. The inconvenience and entailment of extra expenditure to the assessee is not a valid ground for not transferring a case from one Income-tax Officer to another. Also see, *Mangal Chand & Sons v CIT*, (1985) 155 ITR 344 (Cal).

In *T. A. Rajendran v CIT* [(1987) 163 ITR 231 (Ker)], it has been held that entrustment of an important assessment with a senior most Officer cannot normally be viewed with any suspicion.”.

Page 2554: section 129:

At the end of the text of section 129, *add*,—

“**Continuation of proceedings on change of officer.**—The principle of section 129 is that where one income-tax authority succeeds another, the succeeding officer may continue the proceedings from the stage at which they were left by his predecessor. The proviso, however, says that it is open to the assessee to demand that before the proceedings are so continued or reopened, as the case may be, he should be reheard by the successor-in-office. It would immediately be evident that rehearing is not obligatory in every case where there is a change in the incumbent. Such a course may have to be followed when there is a demand from the assessee. The section does not even say that when such a demand is made, it is obligatory upon the officer to afford such hearing [*K. Venkataramana & Budha Appa Rao v CIT*, (1987) 65 CTR (AP) 66, 67]. In that case, the Income-tax Officer made a draft assessment order under section 144B. The assessee filed his objections thereto. The matter was referred to the Inspecting Assistant Commissioner alongwith assessee’s objections. During the pendency of the matter before the IAC, the Income-tax Officer was changed. It was held, on facts, that the provisions of section 129 have no application.

Also see, ‘*Continuation of proceedings on change of Officer*’, at pages 4846-4847 of Vol. 5.”.

Page 2555: section 130:

Before the text of section 130A, *add,—*

“By section 22 of the Taxation Laws (Amendment) Act, 1984, in section 130(2) of the 1961 Act, for the word and figures ‘sections 253’, the word and figures ‘sections 132, 253’ have been substituted with effect from 1st October, 1984.

The above amendment in section 130(2), which relates to jurisdiction of Commissioner competent to perform any function or functions, clarifies that for the purposes of section 132 the Commissioner referred to in section 132 shall, in relation to an assessee, be the Commissioner having, for the time being, jurisdiction over the assessee. This amendment is consequential to the amendment of section 132 by section 23(b) of the Taxation Laws (Amendment) Act, 1984. The amendment is operative with effect from 1st October, 1984.”.

Page 2558: section 131:

At the end of the paragraph titled “II. *By the Taxation Laws (Amendment) Act, 1975*”, *add,—*

“The matter in *Union of India v Gopal Das Gupta* [(1974) Tax LR 636 (Cal)=(1987) 167 ITR 40 (Cal)] was taken in appeals to the Supreme Court in *Union of India v Gopal Das Gupta* [(1987) 167 ITR 39, 49 (SC)]. The Supreme Court took the view that in view of the fact that the power has now been vested in the Assistant Director of Inspection by inserting a new section 131(1A) by the Amending Act 41 of 1975, the question raised has become academic and no useful purpose would be served by deciding that question. Therefore, the appeals were dismissed.”.

Page 2560: section 131:

After the paragraphs titled “*For the purposes of the Act*”, *add,—*

“Power under section 131(1) can be exercised by the authority concerned only if a proceeding is pending before such authority. A summons issued with a view to investigate whether the completed assessment should be reopened under section 147 is liable to be quashed if no proceeding was pending at the time of issuing such summons [*Jamnadas Madhavji & Co. v ITO*, (1986) 162 ITR 331 (Bom)].”.

Page 2563: section 131:

After the paragraph titled “*No right to be represented by merely a lawyer*”, *add,—*

“But a lawyer’s presence cannot be objected to.—A person who is appearing in compliance with a summons is entitled to have his advocate present during the course of his such appearance. But such advocate cannot be permitted to participate in the interrogation and to raise objections to the questions asked by the authority concerned [*Cf. Abdul Rajak Haji Mohammed v Union of India*, (1986) 26 Taxman 234 (Bom)].”.

Page 2566: section 131:

At the end of the paragraph titled "*Recording of reasons for impounding books, etc.—section 131(3), proviso (a)*", add,—

"In *Plycast (Delhi) P. Ptd. v ITO* [(1986) 159 ITR 750 (Del)], the Income-tax Officer passed an order retaining the documents produced before him without passing an order of impounding such documents after recording reasons in that regard. Such retention order was challenged after about three years. It was held that the retention order was contrary to law. Further, the delay in challenging the order could not legalise such order."

Page 2566: section 131:

At the end of the paragraph titled "*Power to retain books, etc.—section 131(3), proviso (b)*", add,—

"For retention for a period exceeding 15 days, the approval accorded by the Commissioner must be a prior approval and not one given *ex post facto*. It is not necessary to communicate the reasons given by the Commissioner while granting such approval [*Sri Ramakrishna Talkies v ITO*, (1985) 153 ITR 794 (AP)].

In the facts of *K. Jayaraman v ITO* [(1987) Taxation 84(3)-398 (Mad)], the original will retained under section 131(3) was directed to be returned to the assessee after keeping a xerox copy thereof."

Page 2582: section 132:

Before the paragraphs titled "*Relevant rules*", add,—

"**1984-amendments.**—The Taxation Laws (Amendment) Act, 1984 (67 of 1984), has amended sub-sections (5), (11) and (12) of section 132 and the *Explanation* to that section. Further, a new sub-section (11A) has been inserted in that section.

The scope and effect of the amendments made in section 132 as also in section 130 have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

'Extension of time for making summary assessments in cases of search and seizure.—13.1 Section 132(5) of the Income-tax Act provides that where any money, bullion, jewellery or other valuable article or thing is seized in the course of search by the income-tax authorities under the said section, the Income-tax Officer shall within 90 days of the seizure, make an order (with the previous approval of the Inspecting Assistant Commissioner) estimating the undisclosed income in a summary manner to the best of his judgment on the basis of such materials as are available to him. The Income-tax Officer is also required to calculate the amount of tax on such estimated income, determine the amount of interest payable and the amount of penalty imposable in consequence of the order made by him; and specify the amount that will be required to satisfy any existing liability of the taxpayer under the direct taxes enactments.

13.2 The Amending Act has amended sub-section (5) of section 132 so as to extend the time for making an order under the said sub-section from ninety days to 120 days of the seizure. A consequential amendment has also been made in *Explanation 1* to section 132.

13.3 The aforesaid amendments take effect from 1st October, 1984 [section 23(a) and (e) of the Amending Act.]

Application against an order under section 132(5) to lie to the Commissioner.—**14.1** Section 132(11) of the Income-tax Act provides that a taxpayer objecting for any reason to an order made by the Income-tax Officer under section 132(5) referred to in paragraph 13 above may make an application to the authority notified by the Central Government in this behalf for appropriate relief in the matter. The Amending Act has made an amendment to sub-section (11) of section 132 to provide that an application against an order under section 132(5) shall lie to the Commissioner. A consequential amendment has been made to section 130(2) of the Income-tax Act to secure that, for the purposes of section 132, the Commissioner referred to therein shall, in relation to an assessee, be the Commissioner having for the time being jurisdiction over the assessee.

14.2 The Amending Act has also inserted a new sub-section (11A) in section 132 to provide that every application referred to in sub-section (11) which is pending immediately before 1st October, 1984, before an authority notified under that sub-section (as it stood immediately before 1st October, 1984) shall stand transferred on that date to the Commissioner, and the Commissioner may proceed with such application from the stage at which it was on that date. The applicant may, however, demand that before proceeding further with the application, he be reheard by the Commissioner.

14.3 The aforesaid amendments take effect from 1st October, 1984. [section 22 and section 23(b), (c) and (d) of the Amending Act].”.

Page 2582: section 132:

After the paragraphs titled “*Relevant rules*”, add,—

“**Ground rules for searches and seizures.**—The (then) Union Finance Minister, Mr. Vishwanath Pratab Singh, announced the ground rules for searches and seizures carried out under the Income-tax Act, the Customs Act, Excise Act and the Foreign Exchange Regulation Act (FERA).

1. Competent authority.—Authorisation for a search can only be ordered by a competent officer after considering the information he has in his possession provided he has reasons to believe that a search is justified. Before the issue of a search warrant, a formal order is required to be passed by the competent authority.

Information may come from external sources like informers, other government departments or newspapers, magazines and publications. In the case of an informer, it is generally made clear to him that he is liable to be pro-

secuted under section 182 of the IPC if his allegations are proved false. Internal sources comprise cases developed *suo motu* on the basis of records and investigation and intelligence gathered by the intelligence wing of the department.

2. *Objectives of the search.*—A search is necessary to secure evidence which is not likely to be made available by issue of summons or by visiting, in ordinary course, the premises concerned. Tax authorities have powers to summon persons and documents. Tax authorities have to resort to search and seizure when there is evidence of undisclosed documents or assets which have not been and would not be disclosed in ordinary course.

3. *Search party.*—Search party has to be led by an officer of a certain rank in case of major searches. The party must be led by an officer of at least the rank of Assistant Collector or equivalent. The team must include two respectable witnesses of the locality and technical persons like valuers, etc.

4. *Rights of the person to be searched:*

- (A) To see the warrant of authorisation duly signed and sealed by the issuing authority.
- (B) Verify the identity of each member of the search party.
- (C) To have at least two respectable and independent residents of the locality as witnesses.
- (D) To have personal search of all members of the party before the start of the search and after conclusion of the search.
- (E) To insist on a personal search of females by another female only with strict regard to decency.
- (F) To have a copy of the *panchanama* together with all the annexures.
- (G) To put his own seals on the packages containing the seized assets.
- (H) Woman having the occupancy of an apartment, etc., to be searched has right to withdraw before the search party enters, if, according to custom, she does not appear in public.
- (I) To call medical practitioner if he is not well.
- (J) To have his children permitted to go to school, after the examination of their bags.
- (K) To inspect the seals placed on various receptacles sealed in course of searches and subsequently reopened by continuation of searches.
- (L) To have the facilities of having meals, etc., at the normal time.
- (M) To have a copy of any statement before it is used against him in an assessment or prosecution proceedings.
- (N) To have inspection of the books of account, etc., seized or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.

5. Examination.—Tax authorities thereafter examine the person searched. In the case of income-tax, the person has to take an oath. In the case of other Acts, it is made clear to him that proceedings are judicial and he is bound to tell the truth. It is also explained to him that the statement is liable to be used against him. This examination is deemed as a judicial proceeding and this statement is admissible as evidence. The purpose of this examination is to secure the explanation of the person regarding the documents and properties before he has an opportunity to concoct an explanation and fabricate evidence. He is not allowed the services of a lawyer at this stage.

6. Report to the senior authority.—After the search, the party has to submit a report to the senior authority like Collector, Commissioner, etc. The outcome of search is given to enable the senior officer to judge the *bona fide* of the search and to exercise control over searches carried out.

7. Safeguards.—Section 136(2) of the Customs Act provides for deterrent punishment including imprisonment of the Customs Officer held responsible for vexatious searches. In the cases of Excise and FERA, vexatious searches are punishable by a fine.

8. Arrests.—The power of arrest vests with the Customs, Central Excise and enforcement officers. Income-tax Officers have no powers of arrests. Arrests are generally resorted to in cases where the detected offence is of a serious nature and the case appears to be fit for criminal prosecution. Persons are generally not arrested when the intention is only to have departmental proceedings. Persons are arrested when there is a gravity of offence, evidence of personal culpability, a strong *prima facie* case and a likelihood of person tampering with the evidence by remaining at large or absconding.

9. Departmental proceedings.—Under the Income-tax Act, the Income-tax Officer concerned must make a summary assessment within 120 days of the seizure estimating the undisclosed income and calculating the amount of tax on income so estimated along with the interest and penalty payable. Thereafter, he retains in his custody only such assets as are, in his opinion, sufficient to satisfy the aggregate amount of tax, penalty and interest due.

Books of accounts and documents seized cannot be retained for more than 180 days except for specially recorded reasons and with the approval of the Commissioner. Law specifically provides that the person concerned may make copies of the documents concerned.

In the case of the Customs Act, the period for retaining the contraband cannot be extended beyond one year. The adjudicating officer can impose penalties up to five times the duty of customs evaded, or three times the duty of excise evaded, or five times the foreign exchange involved. Penalty in the case of income-tax can be up to 200% of tax evaded. The contraband goods can be absolutely confiscated or allowed to be redeemed on payment of fine. No imprisonment can be awarded by an adjudicating officer.

Instructions are being issued that the time-limit of completing search cases will be strictly adhered to in future and no undue extension will be given.

10. Prosecution.—Apart from departmental proceedings, the law provides for criminal prosecution in certain cases. The complaint made by the tax department is treated as a personal criminal complaint as these offences under the Acts are treated as non-cognisable.

The chief offences on which prosecutions are launched are customs and excise duties or income-tax evasion, and in the case of FERA, contravention of the provisions of the Act.

In the case of offences by companies, every person who was in charge at the time when the offence was committed and was responsible for the conduct of business of the company as well as the company itself, are liable to be prosecuted provided that the offence was committed with the knowledge of such person or that he did not exercise all due diligence to prevent the commission of such offence.

Publicity.—The raiding party will not make any statement to the press. Statement to the press, if any, will be made by the head of the department and will be factual in nature. It may be necessary in some cases to give out a press note especially where distorted versions have been released to the press by other parties. [(1986) 159 ITR (J) 1-4].”.

Page 2587: section 132:

At the end of the paragraph titled “*Information*”, add,—

“In *Naraindas v CIT* [(1984) 148 ITR 567 (MP)], it has been held that a detailed report of the Assistant Director (Inspection and Intelligence) can be relied upon by the Commissioner as credible information for taking action under section 132.”.

Pages 2588-2589: section 132:

On the subject “*Has reason to believe*”, reference may also be made to *Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166 (SC); *Pushpa Devi v Union of India*, (1985) 156 ITR 864 (Raj); *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).

Pages 2589-2590: section 132:

At the end of the paragraphs titled “*Formation of the belief*”, add,—

“While the sufficiency or otherwise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can be considered. This is so because the existence or otherwise of the conditions precedent for exercise of power under section 132 is open to judicial scrutiny [*Vindhya Metal Corporation v CIT*, (1985) 156 ITR 233 (All)]. In that case, it was held that mere possession of cash with no proof of ownership was not sufficient for formation of the requisite belief.

In *Pawan Solyent & Chemicals v CIT* [(1987) 166 ITR 67 (Pat)], the search and seizure was held not valid as the same were found to be based on vague suspicion and rumour.

Also see, *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).".

Page 2591: section 132:

On the subject "*Recording of reasons, whether necessary?*", reference may also be made to *State of UP v Lavkush Kumar*, (1985) Tax LR 2589 (All).

Page 2592: section 132:

At the end of the paragraph titled "*Communication of the reasons, whether necessary?*", *add,—*

"The grounds which induced reasonable belief need not be stated in the warrant of authorisation [*Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166, 174 (SC)].".

Page 2592: section 132:

Before line 7 from bottom, *add,—*

"In *Tej Bahadur Dube v CIT* [(1985) 152 ITR 476 (AP), special leave petition granted by the Supreme Court: (1982) 134 ITR (St.) 188], the assessee left a certain amount, which was not accounted for or disclosed in any records, with the manager of a bank for a specific purpose of buying Special Bearer Bonds, 1991. The same was seized by the department. It was held that the seizure was justified. In respect of such amount, the assessee was not entitled to immunity or exemption under section 3 of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981.".

Page 2595: section 132:

On the subject "*Issue merely an administrative act*", reference may also be made to *Hastimal Kothari v CTO*, (1984) Tax LR 2812 (Karn).

Page 2595: section 132:

On the subject "*The warrant of authorisation need not record reasons*", reference may also be made to *Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166 (SC); *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).

Page 2596: section 132:

On the subject "*The warrant of authorisation need not specify the documents to be seized*", reference may also be made to *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).

Page 2596: section 132:

On the subject "*No need to supply copy of the warrant before the search*", reference may also be made to *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).

Page 2597: section 132:

At the end of the paragraph titled "*Provisions of the Criminal Procedure Code, how far applicable—section 132(13)*", add,—

"In order to give full meaning to the expression 'so far as may be' in section 132(13), that sub-section should be interpreted to mean that, broadly, the procedure relating to search as enacted in section 165 of the Criminal Procedure Code shall be followed. But if a deviation becomes necessary to carry out the purposes of the 1961 Act, it would be permissible except that when challenged before a court of law, justification will have to be offered for the deviation [*Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166, 174 (SC)]."

Page 2598: section 132:

In line 5 from top, after "AIR 1970 SC 1396", add,—"; *State of Maharashtra v P. K. Pathak*, AIR 1980 SC 1224; *Hastimal Kothari v CTO*, (1984) Tax LR 2812 (Karn); *CST v Punjab Motor Transport Co.*, (1984) Tax LR 2884 (All)".

Any irregularity in the course of search and seizure committed by the officers acting in pursuance of the authorisation is not sufficient to vitiate the action taken provided the officers had, in executing the authorisation, acted *bona fide* [*Naraindas v CIT*, (1984) 148 ITR 567, 573 (MP)].

Injunction not desirable.—It may be that, in challenging the issue of warrant of authorisation, the petitioner's grievance that the search of his premises would be unfair may be true. But what has to be taken into consideration in such cases is the larger question as to whether the hands of the investigating agency can be fettered by an injunction order of the court on the ground that it would use its powers in excess of the rights conferred on it under the Act. Keeping in view the interest of the State, it is not desirable to grant an injunction [*N. Ramakrishnan v CIT*, (1985) 151 ITR 9 (Mad)].

Every search need not necessarily result in seizure of incriminating material. There can be cases in which a search may fail or a reasonable explanation in respect of the material may be forthcoming [*Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166, 175-176 (SC)].

In *Dy. Director of Inspection v Vinod Kumar Didwania* [(1986) 160 ITR 969 (SC)], prohibitory orders were issued under section 132(3) in relation to goods in certain godowns. The owner or person in possession filed writ petition and obtained an *ex parte* injunction against the income-tax authority and removed the goods from the godowns. Thereafter, the writ petition was withdrawn. It was held by the Supreme Court that there was abuse of the process of court and the owner or the person in possession could not be allowed to retain that advantage. The respondent was directed to pay the estimated value of the goods so removed within a specified period by way of restitution.

Page 2600: section 132:

After line 30 from top, *add*,—

“The above controversy has been set at rest by the Supreme Court in *CIT v Tarsem Kumar* [(1986) 161 ITR 505 (SC)] by **affirming** the decision of the Punjab High Court in *Tarsem Kumar v CIT* [(1974) 94 ITR 567 (Punj)]. The Supreme Court ruled that in respect of the amount in the custody of the Customs authorities, a warrant of authorisation for search and seizure cannot be issued. Where the exact location of the property was known and certain, there was nothing to search or look for. There was no need to seize the money. In such a case, it was open to the income-tax authorities to approach the appropriate authority to realise any amount of money or to recover any books of account or documents in accordance with law.

In taking that view, the Supreme Court has **approved** the decisions in *CIT v Ramesh Chander* [(1974) 93 ITR 450 (Punj)]; *Laxmipat Choraria v K. K. Ganguli* [(1971) 82 ITR 306 (Cal), **affirmed** on appeal, (1974) 93 ITR 489 (Cal)]; *Motilal v Preventive Intelligence Officer* [(1971) 80 ITR 418 (All)] and has **overruled** *Noor Mohd. Rahimatulla Gillani v CIT* [(1976) Tax LR 688 (Bom)]; *Pannalal v ITO* [(1974) 93 ITR 480 (MP)]; *Gulab & Co. v Supdt. of Central Excise* [(1975) 98 ITR 581 (Mad)] and *Assainar v ITO* [(1975) 101 ITR 854 (Ker)].

The above view has been followed in *ITO v Bafna Textiles* [(1987) 164 ITR 281 (SC)], **affirming** *Bafna Textiles v ITO* [(1975) 98 ITR 1 (Ker)].”

Pages 2601-2602: section 132:

On the subject “*Presence of police*”, reference may also be made to *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).

Pages 2603-2604: section 132:

On the subject “*Mala fide searches*”, reference may also be made to—

(1) *Naraindas v CIT*, (1984) 148 ITR 567 (MP) [No allegation of *mala fides* was made by the petitioner].

(2) *Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166 (SC) [Holding that a nefarious attempt had been made to cook up a wholly imaginary allegation for attributing personal *mala fides*].

(3) *Express Newspapers Pr. Ltd. v Union of India*, AIR 1986 SC 872 [Vague allegations of *mala fides* are not sufficient. The abuse of authority must appear to be reasonably probable].

Page 2604: section 132:

On the subject “*Error of judgment in seeing relevancy of documents does not make the search and seizure illegal*”, reference may also be made to *Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal).

Page 2604: section 132:

At the end of the page, *add*,—

“Enormity of the search party—no ground for interference.—The enormity of the search party cannot be ground for interference by the court where the building and the premises to be searched are big and it is necessary for the purpose of the search and seizure that the presence of a number of persons is required [*Subir Roy v S. K. Chattopadhyay*, (1986) 158 ITR 472 (Cal)].”.

Page 2605: section 132:

Before line 3 from bottom, *add*,—

“(4) In *V. Chidambaram v D. Venkatesan* [(1987) 167 ITR 443 (Mad)], the officer of the income-tax department opened a room, which was sealed under order of a court of law, without prior permission of the court. It was held that the officer has committed contempt of the court.

(5) For facts and decision, see, *CIT v Varinder Kumar Jindal* [(1987) Taxation 86(3)-11 (Punj)].”.

Page 2606: section 132:

Before the paragraph titled “*Onus*”, *add*,—

“Alternative remedy, when no bar to writ jurisdiction.—In writ proceedings, the plea of alternative remedy is of no avail where the action taken by the authorities is wholly without jurisdiction and results in the infringement of any fundamental right of the petitioner [*Vindhya Metal Corporation v CIT*, (1985) 156 ITR 233 (All)]. In that case, the order seizing the cash money under section 132A from an authority was quashed as the condition precedent for exercise of power under section 132A was lacking.

But the existence of an efficacious alternative remedy can bar issue of a writ [*P. M. Kunhabdulla Haji v ITO*, (1986) 162 ITR 304 (Ker); *Ram Mohan Rastogi v Union of India* [(1987) 163 ITR 17 (All)]; *Abdul Sattar v CIT*, (1987) Taxation 85(3)-281 (All)].

In the facts of *Pushpa Devi v Union of India* [(1985) 156 ITR 864 (Raj)], it was held that the Income-tax Officer had no authority to retain the gold ornaments belonging to the petitioner which were seized with ornaments belonging to her husband. It was also held that the gold ornaments could not be seized by the authorities under the Gold (Control) Act, 1968.”.

Pages 2606-2607: section 132:

At the end of the paragraphs titled “*What happens to things recovered on a legally bad search?*”, *add*,—

“Illegality of the search does not vitiate the evidence collected during such illegal search. The only requirement is that the court or the authority before which such material or evidence seized during the search shown to be illegal is placed has to be cautious and circumspect in dealing with

such evidence or material [*Dr. Partap Singh v Director of Enforcement*, (1985) 155 ITR 166, 175 (SC)].”.

Page 2608: section 132:

At the end of the paragraph titled “*Restraining u/s. 132(3)*”, *add*,—

“An immovable property, *e.g.*, a shop, cannot be made subject-matter of an order of restraint under section 132(3) [*Sardar Parduman Singh v Union of India*, (1987) 166 ITR 115 (Del), special leave petition dismissed by the Supreme Court: (1987) 168 ITR (St.) 3 (SC)].”.

Page 2611: section 132:

Before line 4 from bottom, *add*,—

“**Validity of order u/s. 132(3) not dependent on passing an order u/s. 132(5).**—The validity of an order under section 132(3) is not dependent upon passing an order under section 132(5). The jurisdiction to pass an order under section 132(5) is dependent where any money, bullion, jewellery or other valuable article or thing is seized under sub-sections (1) and (1A) of section 132. The prohibitory order under section 132(3) is not within the sweep of section 132(5). In this view of the matter, the validity of an order under section 132(3) will not be affected merely because no order under section 132(5) has been passed [*Abdul Saitar v CIT*, (1987) Taxation 85(3)-281 (All)].”.

Page 2612: section 132:

At the end of the paragraph “*Power to record statement—s. 132(4)*”, *add*,—

“The power to interrogate on oath conferred by section 132(4) is not for the purposes of general investigation of the assets, but for the limited purpose of seeking explanation or information in respect of the documents, articles or things found during the search. Thus, the authorised officer has a limited power to make enquiries on oath in respect of his findings from the search and he is not authorised to put questions in general [*R. R. Gavit v Smt. Sherbanoo Hasan Daya*, (1986) 161 ITR 793, 799 (Bom), special leave petition dismissed by the Supreme Court: (1987) 166 ITR (St.) 111 (SC)].”.

Page 2612: section 132:

At the end of the paragraphs titled “*Presumptions under section 132(4A)*”, *add*,—

“It is true that section 132(4A) enables the court or other authority to presume the truth of the contents of such books of accounts, etc. However, it is a presumption which can be rebutted. Moreover, the presumption envisaged therein is only a factual presumption. It is in the discretion of the court or the authority, depending upon other factors, to decide whether the presumption must be drawn. The expression used in the sub-section is ‘may be presumed’ as is used in section 114 of the Evidence Act. It is not

a mandate that whenever the books of accounts, etc., are seized, the court or the authority shall necessarily draw the presumption, irrespective of any other factors which may dissuade the court or the authority from doing so [*ITO v T. Abdul Majeed*, (1987) 64 CTR (Ker) 266, 268-269].

The provisions of section 139 of the Customs Act, 1962, which are analogous to those of section 132(4A) of the 1961 Act, have been considered in *Kallatra Abbas Haji v Government of India* [(1984) 1 Excise and Customs Cases 108, 115 (Ker)].”.

Page 2614: section 132:

Lines 15-16 from top: On the subject of approval by the Inspecting Assistant Commissioner, reference may be made to *K. Jayaraman v ITO*, (1986) 161 ITR 531 (Mad).

Page 2615: section 132:

After line 15 from top, *add*,—

“Period of limitation for passing section 132(5) order.—Section 132(5) requires an order to be passed thereunder within 120 days [90 days up to 30-9-1984] of the seizure.

In *Smt. Santosh Kumari Aggarwal v CIT* [(1984) 146 ITR 318 (Punj)], it has been held that the period of limitation is to be counted from the date when the Income-tax Officer having jurisdiction over the assessee takes possession of the seized articles although these might have been seized earlier by another officer.”.

Pages 2615-2616: section 132:

On the subject “Order under section 132(5) without giving opportunity to the person concerned is liable to be quashed”, reference may also be made to *K. A. Karim & Sons v ITO*, (1984) 149 ITR 172 (Ker).

Pages 2622-2623: section 132:

On the subject “Period of retention of books—section 132(8) and the proviso thereto”, reference may also be made to—

(1) *CIT v Oriental Rubber Works*, (1984) 145 ITR 477 (SC) [two conditions must be fulfilled before such extended retention becomes permissible in law: (a) reasons in writing must be recorded by the authorised officer or the concerned Income-tax Officer seeking the Commissioner’s approval, and (b) obtaining of the Commissioner’s approval for such extended retention and if either of these conditions is not fulfilled such extended retention will become unlawful and the concerned person (*i.e.*, the person from whose custody such books or documents have been seized or the person to whom those belong) acquires a right to the return of the same forthwith].

(2) *Sampat Lal & Sons v CIT*, (1984) 150 ITR 191 (MP) [approval must be accorded within the period of 180 days of seizure]. Also see, *Hyderabad Vanaspathi Ltd. v ITO*, (1985) 152 ITR 1 (AP).

(3) *Survir Enterprises v CIT*, (1986) 157 ITR 206 (Del) [a gap of even a single day may be fatal to the retention].

(4) *Director of Inspection v K. C. A. & Co.*, (1987) 32 Taxman 495 (J & K) [direction of the single judge to hand over seized account books to the respondent after every page having been initialled and stamped with official seal of the authority concerned was upheld].

(5) *Abdul Sattar v CIT*, (1987) Taxation 85(3)-281 (All) [extension sought on the ground that the books of accounts and other documents seized were required for completion of assessment proceedings pending against the petitioner was upheld as the same could not be said to be on an irrelevant ground].

Also see, *Kanhiya Lal Om Prakash v CIT*, (1986) 158 ITR 170 (All); *Khandani Shafakhana v Union of India*, SLP (Civil) No. 14989 of 1986: (1987) 164 ITR (St.) 34 (SC).

Page 2623: section 132:

Before line 14 from bottom, *add*,—

“Illustrative cases about approval for retention.—Reference in this connection may be made to—

(1) *Bengali Baboo Yadav v CIT*, (1986) 57 CTR (All) 279 [retention of documents beyond 180 days after obtaining approval of the Commissioner was held justified].

(2) *K. V. Krishnaswamy Naidu & Co. v CIT*, (1987) 166 ITR 244 (Mad) [retention after approval under section 132(8) can be made only by the Income-tax Officer having jurisdiction over the assessee—*disagreeing with K. Raju v ITO*, (1985) 153 ITR 138 (Mad) on ‘the point’].”

Pages 2623-2624: section 132:

At the end of the paragraph titled “*Commissioner’s approval to be communicated to the party*”, *add*,—

“The scheme of sub-sections (8), (10) and (12) of section 132 makes it amply clear that there is a statutory obligation on the Revenue to communicate to the person concerned not merely the Commissioner’s approval but the recorded reasons on which the same has been obtained and that such communication must be made as expeditiously as possible after the passing of the order of approval by the Commissioner and in default of such expeditious communication any further retention of the seized books or documents would become invalid and unlawful. It is obvious that such obligation arises in regard to every approval of the Commissioner that might have been accorded from time to time [*CIT v Oriental Rubber Works*, (1984) 145 ITR 477, 484 (SC)]. Also see, *Cowasjee Nusserwanji Dinshaw v ITO*, (1987) 165 ITR 702 (Guj); *Thanthi Trust v CIT*, (1987) 167 ITR 397 (Del).”

Page 2624: section 132:

At the end of the paragraph titled "*Authorised Officer for s. 132(8)*", *add*,—"Such handing over has to be effected within a period of 15 days of the seizure. Retention of the documents, etc., by the no-jurisdiction officer beyond the period of 15 days makes the retention illegal [*K. V. Krishnaswamy Naidu & Co. v CIT*, (1987) 166 ITR 244 (Mad)].".

Page 2628: section 132A:

After line 20 from top, *add*,—

"The term 'authority' in section 132A cannot be construed to include 'court' also [*Balbir Singh v CIT*, (1984) 146 ITR 266 (Punj)]. In that case, the requisition made by the Commissioner to the Treasury Officer directing him to deliver the currency notes in the custody of Chief Judicial Magistrate to the Income-tax Officer was quashed."

Page 2630: section 132B:

At the end of line 12 from top, *add*,—"The rate of interest has further been enhanced from 12 per cent. to 15 per cent. as a result of amendment of section 132B(4)(a) by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984."

Page 2630: section 132B:

At the end of the paragraph titled "*Application of seized assets—section 132B(1)*", *add*,—

"In *Harinder Singh v ITO* [(1987) 166 ITR 763 (All)], special leave petition dismissed by the Supreme Court: (1987) 167 ITR (St.) 1], it has been held that tax liabilities were not to be adjusted against the seized gold which was liable to be confiscated under the provisions of the Gold (Control) Act, 1968."

Page 2632: section 132B:

Before the text of section 133, *add*,—

"**Settlement after seizure.**—In *Ramnarain v CIT: Badri Prasad v CIT* [(1983) 144 ITR 521 (All)], special leave petition granted by the Supreme Court: (1984) 146 ITR (St.) 5], subsequent to the seizure of certain articles of the assessee, a settlement was arrived at between the assessee and the Board whereunder the assessee agreed to pay taxes and penalties in instalments and the department agreed to release seized articles in stages. Part of the seized articles were released and some of the instalments were paid. For releasing the remaining seized articles, the department asked for an undertaking to pay outstanding dues before a particular date. It was held that such requirement was not a part of the original settlement and could not be enforced."

Page 2641: new section 133B:

Before the text of section 134, *add*,—

"**New section 133B.**—A new section 133B, relating to power to collect

certain information, has been inserted by the Finance Act, 1986 (23 of 1986), with effect from 13th May, 1986. The scope and effect of the newly inserted section 133B have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'(xvii) Extension of power of survey.—35.1 It was announced in the long-term fiscal policy (paras. 4.4 and 4.5) that an important objective of the said policy must be to ensure that income-tax makes a larger contribution to revenue and that the decline in the share of direct taxes has to be reversed. This is possible only if the tax base is broadened so that the number of taxpayers increases automatically with the growth of the economy. In order to achieve this objective, the Department has necessarily to obtain information about the incomes of such people who are liable to tax but are not filing their returns of income. Information is also needed for detection of evasion of taxes in respect of taxpayers who are filing returns of income. For this purpose, the Department has quite often to launch, door-to-door survey in specified business localities in order to identify persons who are earning taxable income but are not filing any return of income. Hence, by insertion of a new section 133B in the Income-tax Act, an income-tax authority has been authorised to enter any business premises for obtaining such information as may be prescribed. Further, at present, under section 133A(1) of the Income-tax Act, an Inspector of Income-tax has to get separate authorisation from an I.T.O. with respect to each place or business premises to be surveyed. This generates tremendous workload and results in delaying the survey operations. In order to overcome this difficulty, an I.T.O. has been empowered under the new section to authorise an Inspector of Income-tax with respect to a specified locality. The power of the income-tax authorities to collect the prescribed information has been restricted to business premises only for the present. The prescribed information will relate, *inter alia*, to the sources of income of the occupant of a business premises, the nature of business/profession, the details regarding the account books, bank accounts and stock-in-trade, etc.

35.2 The new section 272AA provides for penalty extending up to Rs. 1,000 for failure to comply with the provisions of section 133B.

35.3 These provisions are effective from 13th May, 1986.'".

Page 2641: section 136:

After the paragraph titled "1922 Act", add,—

"Legislative amendment.—Section 136 has been amended by the Finance Act, 1985 (32 of 1985), with retrospective effect from 1st April, 1974. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of the provisions relating to proceedings before income-tax authorities.—35.1 Under section 136 of the Income-tax Act, proceedings before an income-tax authority are deemed to be judicial proceedings within

the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. The Finance Act, 1985, has amended the said section to also provide that an income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973. This amendment is intended to secure that prosecution proceedings for offences under the relevant provisions of the Indian Penal Code may be launched on the complaint of the concerned income-tax authority.

35.2 The amendment takes effect from 1st April, 1974, that is, the date from which the Code of Criminal Procedure, 1973, came into force.'".

Page 2644: section 136:

At the end of the paragraphs titled "*Income-tax Officer is not a 'court' within the meaning of section 195(1)(b) of the Cr PC*", add,—

"But as a result of the amendment of section 136 by section 28 of the Finance Act, 1985 (32 of 1985), every Income-tax Authority is to be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXI, of the Code of Criminal Procedure, 1973 (2 of 1974), with retrospective effect from 1st April, 1974.".

Page 2647: section 137:

On the subject "*Section 54 or 137 placed an absolute embargo*", reference may also be made to *L. T. Ibrahim v Ag. ITO*, (1987) 163 ITR 91 (Ker); *State of Tamil Nadu v S. N. Thirugnanam*, (1986) 55 CTR (Mad) 431; *M. C. Shanmukhan v Vachali Jayalakshmi*, (1987) Tax LR 2137 (Ker).

Pages 2647-2649: section 137:

On the subject "*Did section 54 or 137 create a vested right of secrecy?*", reference may also be made to *Girish Nandan Singh v Satyanarain Agarwal Dhandhanial*, (1983) 144 ITR 866 (Pat).

Page 2652: section 138:

At the end of the page, add,—

"In the facts of *State of Maharashtra v O. V. Pawar* [(1987) 165 ITR 233 (Bom)], the claim of the Government not to disclose the names of informers was upheld on the ground of public interest privilege.".

Page 2655: section 138:

Lines 13-14 from top: The decision in *State of Punjab v Sodhi Sukhdev Singh* [AIR 1961 SC 493] has been overruled in *S. P. Gupta v President of India* [AIR 1982 SC 149].

Page 2656: section 138:

At the end of the paragraph titled "*Embargo of section 138(2) has application only in cases notified*", add,—

"For claiming privilege of withholding information, etc., under section

138(2), there must exist a notification issued by the Central Government as envisaged in section 138(2). Unless and until such a notification is issued by the Central Government, the Income-tax Officer cannot claim the privilege of withholding a document, etc. [*Sabrose Finance Corporation v State of Haryana*, (1985) 154 ITR 890 (Punj)].”.

Page 2659: section 138:

After line 8 from top, *add*,—

“XII. *Notification No. S. O. 186, dated December 9, 1983.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies all class I officers of the Reserve Bank of India, Regional Office, Ahmedabad, for the purposes of the said sub-clause.

XIII. *Notification No. S. O. 258, dated December 9, 1983.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies all Officers of and above the rank of Superintendent of Police of the Special Police Establishment, Government of Madhya Pradesh, for the purposes of the said sub-clause.

XIV. *Notification No. S. O. 259, dated December 23, 1983.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the Karnataka State Vigilance Commission, Bangalore, or any officer specifically authorised by the Commission in this behalf for the purposes of the said sub-clause.

XV. *Notification No. S. O. 6101, dated January 8, 1985.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby authorises all class I Officer of the Anti-Corruption Bureau, Hyderabad, for the purposes of the said sub-clause.

XVI. *Notification No. S. O. 6135, dated February 4, 1985.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the Director/I.G.P., Anti-Corruption Bureau, Government of Maharashtra, or any other Officer duly authorised by him in writing in respect of each specific case for the purposes of the said sub-clause.

XVII. *Notification No. S. O. 6136, dated February 4, 1985.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby authorises the Registrar of Co-operative Societies, Sachivalaya, Gandhi Nagar, Ahmedabad, or any other Officer duly authorised by him in writing in respect of each specific case for the purposes of the said sub-clause.

XVIII. *Notification No. S. O. 6137, dated February 4, 1985.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby authorises the Director/I.G.P., Vigilance Bureau of Punjab, Patiala or any Officer duly authorised in writing by him in each specific case for the purposes of the said sub-clause.

XIX. *Notification No. S. O. 6139, dated February 4, 1985.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby authorises the Commissioner, Municipal Corporation, Rajkot, or any other Officer duly authorised by him in writing in respect of each specific case for the purposes of the said sub-clause.

XX. *Notification No. S. O. 3177, dated July 18, 1986.*—In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the Uttar Pradesh Vigilance Commission, U.P., Lucknow, or any officer specifically authorised by the Commission in this behalf for the purpose of the said sub-clause.”.

Page 2683: section 139:

Before the footnote marked*, *add*,—

“XII. *The Taxation Laws (Amendment) Act, 1984.*—The scope and effect of the amendments made by this Act in section 139 have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

‘Return of income—section 139.—15.1 Under the existing provisions contained in clause (b) of sub-section (1A) of section 139 of the Income-tax Act, a person whose salary (exclusive of the value of all benefits or amenities not provided by way of monetary payment) does not exceed Rs. 18,000 is not required to furnish a voluntary return of income, if the other conditions laid down in that sub-section are fulfilled.

15.2 The Amending Act has substituted the aforesaid clause (b) by a new clause to provide that a person whose income under the head “Salaries” (exclusive of the value of benefits or amenities not provided by way of monetary payment) does not exceed Rs. 18,000†, will not be required to furnish a voluntary return of income, subject to the fulfilment of the other conditions laid down in the aforesaid sub-section. As income under the head “Salaries” is computed after allowing standard deduction under section 16(i) of the Act, the effect of the amendment will be that a person whose salary (exclusive of the value of benefits and amenities aforesaid) does not

† Raised to Rs. 24,000 by the Finance Act, 1985, with effect from 1-4-1986, i.e., for and from assessment year 1986-87.

exceed Rs. 24,000† will not be required to furnish a voluntary return of income, subject to the fulfilment of the other conditions contained in section 139(1A) of the Act.

15.3 Under the existing provisions contained in *Explanation 2* to clause (a) of section 139(8), interest for late filing of, or failure to file, the return of income in the case of a registered firm is calculated by treating the registered firm as an unregistered firm. The aforesaid *Explanation 2* has been substituted by a new *Explanation 2*. The new *Explanation*, which will apply to all categories of assessees, provides that where an assessment is made for the first time under section 147 of the Income-tax Act, the assessment so made shall be regarded as a regular assessment under section 143 or section 144 of the Income-tax Act. The effect of the amendment, therefore, will be that—

- (a) Interest under section 139(8) for delay or default in furnishing the return of income by a registered firm shall be calculated with reference to the tax payable by the firm as a registered firm and not with reference to tax payable by it as if it were assessed as an unregistered firm.
- (b) Interest under section 139(8) of the Act in the case of all categories of assessees will become payable even in cases where an assessment for a particular year is made for the first time under section 147 of the Act.

15.4 Under the existing provisions contained in clause (b) of section 139(8), interest payable by an assessee for delay or default in furnishing the return of income is required to be reduced in cases where the tax on which the interest was payable has been reduced as a result of an order under section 154, 155, 250, 254, 260, 262 or section 264 of the Act. This clause has been substituted by a new clause (b) which provides that where as a result of any of the orders specified in that clause, the amount of tax on which interest was payable *has been increased or reduced*, the interest shall be increased or reduced accordingly. In a case where the interest is increased, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be issued under section 156 of the Act and the provisions of the Act shall apply accordingly. In cases where such interest is reduced, the excess interest paid, if any, shall be refunded to the assessee.

15.5 These amendments take effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.’

XIII. The Finance Act, 1985.—The scope and effect of the amendment made by this Act in sections 139(1A)(b) and 139(9), *Explanation (e)*,

† Rs. 30,000, for and from assessment year 1986-87.

have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of the provisions relating to return of income.—36.1 Under section 139(1A) of the Income-tax Act, a person whose income chargeable under the head "Salaries" (exclusive of the value of all benefits or amenities not provided for by way of monetary payment) does not exceed Rs. 18,000 is not required to furnish a voluntary return of income, if certain conditions specified in this regard are fulfilled. In the context of the raising of the exemption limit, the Finance Act, 1985, has raised the aforesaid limit of Rs. 18,000 to Rs. 24,000.

36.2 The amendment takes effect from 1st April, 1986, and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.

Submission of report of audit of cost accounts.—37.1 Under section 139(9) of the Income-tax Act, a return of income is considered defective if certain conditions specified in this behalf are not fulfilled. One of the conditions is that where the accounts of the assessee have been audited, the return shall be accompanied by copies of the audited profit and loss account, balance-sheet and the auditor's report.

37.2 With a view to facilitating scrutiny of accounts, the Finance Act, 1985, has amended section 139(9) to also provide that where the cost accounts of an assessee have been audited under section 233B of the Companies Act, 1956, the return shall be treated as defective unless it is also accompanied by the report under that section.

37.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'

XIV. The Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 (46 of 1986).—The scope and effect of the amendments made in section 139 by this Act have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under:—

'(vi) Providing the date by which a return showing loss is to be furnished and treatment of returns below taxable limit.—9.1 Under the existing provisions of section 139(3) of the Income-tax Act, as amended by the Taxation Laws (Amendment) Act, 1970, the Income-tax Officer on an application made to him for this purpose is empowered to extend, in his discretion, the time for furnishing a return of loss. By the Amending Act, this power of the Income-tax Officer has been withdrawn. Accordingly, as per the amended provision, if the assessee is to get the benefit of the determination of the loss or any part thereof and for its carry forward under section 72(1) or section 73(2) or section 74(1) or section 74A(3) of the Income-tax Act, he should file the return voluntarily within the period specified in section 139(1) or by the 31st day of July of the assessment year relevant to the previous year during which the loss was sustained. Further, as

per clause (d) of the proviso to the newly inserted sub-section (10) to section 139 of the Income-tax Act, which overrides anything contained in any other provision of the Income-tax Act, a return of loss which has been furnished after the thirty-first day of July of the assessment year during which the loss was sustained, shall be deemed never to have been furnished.

9.2 The above amendment shall come into force with effect from 1st April, 1987, and will, accordingly, apply to the assessment year 1987-88 and subsequent years.

9.3 Section 139(1) of the Income-tax Act provides that every person if his total income or the total income of any other person in respect of which he is assessable during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person in the prescribed form and verified in the prescribed manner. This return has to be furnished within the specified period. It was held by the Supreme Court in the case of *CIT v Ranchhoddas Karsondas* (36 ITR 569), that a return disclosing income below taxable limit submitted voluntarily under section 22(1) of the Indian Income-tax Act, 1922 [corresponding to section 139(1) of the Income-tax Act, 1961], is a good return and such a return voluntarily made before the assessment cannot be ignored by the Income-tax Officer. This decision has been superseded by the Amending Act by inserting sub-section (10) after sub-section (9) of section 139. The new sub-section (10) provides that notwithstanding anything contained in any other provision of this Act, a return of income which shows the total income below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished. As per the proviso to this sub-section, a return of income below taxable limit shall not be treated as *non est* in the following circumstances:

- (a) a return furnished in response to a notice under section 148(2);
- (b) a return of a partner of a firm;
- (c) a return of a person who has claimed exemption of income from property held for charitable or religious purposes;
- (d) a return of loss which has been furnished before the 31st day of July of the assessment year relevant to the previous year during which the loss was sustained;
- (e) a return furnished under sub-section (4B) in respect of a political party;
- (f) a return furnished in support of a claim for refund under section 237.

9.4 These amendments shall come into force with effect from 1st April, 1986, and will be applicable to the assessment year 1986-87 and subsequent years.

9.5 It may be clarified that the assessments already completed before the enactment of the Amending Act will not be rectified. Further, keeping in view, the fact that the new sub-section (3) comes into force with

effect from 1st April, 1987, a return of loss filed for the assessment year 1986-87 or earlier years within the prescribed period as per the existing provisions will not be denied the benefit of the carry forward of loss.’.

XV. The Finance Act, 1987.—The amendment made by section 74(c) (ii) of the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, in section 139(3) is consequential to the substitution, by that Act, of a new section 74 of the 1961 Act.”.

Page 2685: section 139:

On the subject “*Charitable or religious trust or institution—return to be furnished by trustees, etc.*”, reference may also be made to *Modi Charitable Fund Society v ITO*, (1983) 142 ITR 818 (All); *Thanthi Trust v CIT*, (1987) 167 ITR 397, 399 (Del).

Page 2690: section 139:

After line 7 from top, *add*,—

“Posting of a valid return within the statutory date under certificate of posting is sufficient evidence of return having been filed within time [*CIT v Kalyani Selection Kargallia Colliery*, (1984) 146 ITR 577 (Pat)].”.

Page 2692: section 139:

At the end of the paragraphs titled “*Certain salaried persons need not furnish returns of income*”, *add*,—

“The above condition (b) has been amended by the Taxation Laws (Amendment) Act, 1984, with effect from 1st April, 1985, and also by the Finance Act, 1985, with effect from 1st April, 1986.

The above condition (c) has to be read subject to the subsequent amendments of section 80L.”.

Pages 2697-2698: section 139:

On the subject “*Belated application for extension of time*”, reference may also be made to—

(1) *Harmanjit Trust v CIT*, (1984) 148 ITR 214 (Punj) [even a belated application has to be considered].

(2) *CIT v S. P. Viz Construction Co.*, (1987) 165 ITR 732 (Pat) [a belated application need not be considered].

Pages 2698-2699: section 139:

On the subject “*No reply to assessee’s extension application, presumption that extension has been allowed*”, reference may also be made to *Harmanjit Trust v CIT*, (1984) 148 ITR 214 (Punj).

Page 2699: section 139:

At the end of the paragraph titled “*Returned status v. assessed status*”, *add*,—

"In *CIT v Associated Cement and Steel Agencies* [(1984) 147 ITR 776 (Bom)], a return was submitted in the status of a firm. The assessment in the status of an association of persons was held not permissible. Also see, *CWT v Jagdish Puri*, (1987) 163 ITR 458 (Raj).

But, an assessment need not necessarily be made solely on the basis of the admission about status made by the assessee in the return. A proper order of assessment should be made on the basis of all facts and circumstances and on a correct application of the relevant provisions of law. In this view of the matter, assessment in the status of individuals was upheld even though the assessee claimed status as 'body of individuals' [*CIT v A. P. Parukutty Mooppilamma*, (1984) 149 ITR 131 (Ker)]. Similarly, in *Munilal Shivnarain Kothari v CIT* [(1984) 149 ITR 567 (Raj)], negating the claim of the assessee to be assessed as firm, the assessment in the status of an association of persons was upheld because there was a finding that there was no firm at all. Also, a reassessment in the status of an association of persons was upheld where the firm was found to be invalid due to the fact of a minor having been made a full-fledged partner in the firm [*Sudhanshu Kumar Bose v CIT*, (1984) 150 ITR 626 (Cal)].".

Pages 2699-2700: section 139:

At the end of the paragraphs titled "*Loss returns*", add,—

"The above paragraphs are to be read subject to the amendment of section 139(3) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1987, and the amendment of section 80 by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st April, 1985."

Page 2702: section 139:

After line 13 from top, add,—

"Filing of returns showing income below taxable limit.—Section 139(10), newly inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with retrospective effect from 1st April, 1986, enacts overriding provisions and lays down that notwithstanding anything contained in any other provision of the 1961 Act, a return of income which shows the total income below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished. However, a return falling within any of the clauses (a) to (f) of the proviso to section 139(10) is not covered by the provisions of the main section 139(10).

Although the departmental circular No. 493, dated 21st August, 1987, proceeds on the basis that the returns showing income below taxable limit are to be treated as '*non est*' returns, the phraseology of the statutory provisions of section 139(10) does not warrant such an assumption. The said circular No. 493, dated 21st August, 1987, reads as under:—

'Returns of income below taxable limit—Whether such returns are to be accepted at the Receipt Counters.—Attention is invited to Instruction No. 1744, dated 21-1-1987 and No. 1765, dated 25-6-1987 in which Board

have clarified that returns of income for the assessment year 1986-87 and subsequent years which are below taxable limit, should not be acted upon unless covered under the exceptions contained in the proviso to sub-section (10) of section 139 of the Income-tax Act. The Board, *vide* para 2(i) of Instruction No. 1744, dated 21-1-1987, desired that suitable instructions may be issued by the Commissioners of Income-tax in this regard.

2. It has been brought to the notice of the Board that no uniform practice is followed regarding receipt of such returns at the Receipt Counters. While in some charges instructions have been issued by the Commissioners not to accept such returns unless covered by the exceptions, in many charges the returns are being accepted, entered into registers and then treated as '*non est*'. Clarifications have also been sought by taxpayers, associations and Commissioners of Income-tax on this issue.

3. The matter has, therefore, been examined by the Board with a view to having uniformity of procedure. In this background, I am directed to draw your attention to the forms of returns of income prescribed under the Rules and to say that there are specific columns in the return forms clearly indicating whether the return falls under any of the exceptions contained in the proviso to section 139(10) or not. For instance, columns (iii), (iv), (v) and (vi) of Form No. 2 correspond to the exceptions contained in clauses (a), (e), (b) and (f) of the proviso respectively. Similarly, there are columns in all the other return forms, from which the official receiving returns can ascertain whether a return which is below taxable limit falls under one of the exempted categories and is to be accepted.

4. It may be noted that all the returns filed in Form No. 3A have to be accepted as these fall under one of the exceptions contained in the said proviso. Similarly, all returns filed in Form No. 1 which pertains to companies are to be accepted. Though there is no column in the return forms to indicate that a return has been filed under section 139(2), such returns can also be identified at the Receipt Counters as these are normally accompanied by a covering letter or otherwise it is indicated on the return form itself by the assessee.

5. In view of these facts, identification of valid returns can be made even at the Receipt Counters. Therefore, returns which are not valid should not be accepted at the Receipt Counters. You may kindly issue necessary instructions to the officers and staff working under you that the returns of income below taxable limit barring those covered under the exceptions contained in the proviso to section 139(10) are not to be received at the counter. Wide publicity should be given to these instructions.' [Circular No. 493, dated 21st August, 1987]."

Page 2703: section 139:

After serial No. 7, giving illustrative cases about '*non est*' returns, add,—

"8. An unverified return [*CIT v Dr. Krishan Lal Goyal*, (1984) 148 ITR 283 (Punj)].".

Page 2703: section 139:

At the end of serial No. 2, giving the illustrative cases about valid returns, *add*,—“*CIT v Bharat Refineries Ltd* [(1986) 162 ITR 652 (Cal)] [But, see, *Contra: CIT v S. P. Viz Construction Co.*, (1987) 165 ITR 732 (Pat), on its own facts. With effect from 1st September, 1980, the provisions of section 139(9) are apposite in this context];”.

Pages 2705-2707: section 139:

On the subject “*Revised return—section 139(5)*”, reference may also be made to—

(1) *Beco Engg. Co. Ltd. v CIT*, (1984) 148 ITR 478 (Punj) [claim for depreciation and extra shift allowance withdrawn in the revised return].

(2) *CIT v P. T. Antony & Sons*, (1985) 151 ITR 34 (Ker) [return pursuant to section 148 cannot be treated as a revised return].

(3) *Deepnarain Nagu & Co. v CIT*, (1986) 157 ITR 37 (MP) [change over from mercantile system to cash system not possible by filing a revised return].

(4) *CIT v Chitranjali*, (1986) 159 ITR 801 (Cal) [assessment made on the basis of an original return ignoring a revised return is liable to be set aside but not cancelled as a nullity because a revised return cures the defects in the original return and does not obliterate the latter].

Page 2707: section 139:

On the subject “*Whether a voluntary return furnished under section 139(4) may be revised?*”, reference may also be made to—

(1) *Nanjappa Textiles v CIT*, (1985) 153 ITR 109 (Mad) [return under section 139(4) can be revised]. Also see, *Balish Singh & Co. v CIT*, (1987) 165 ITR 575 (Cal).

(2) *Vimalchand v CIT*, (1985) 155 ITR 593 (Raj) [return under section 139(4) cannot be revised]. Also see, *Smt. Sobharani v CIT*, (1986) 160 ITR 453 (Raj); *Eapen Joseph v CIT*, (1987) 168 ITR 26 (Ker).

Also see, *R. K. Machine Tools v CIT*, (1985) Taxation 79(3)-106 (Del).

Page 2711: section 139:

After line 7 from top, *add*,—

“For interpretation of pre-1970 section 139(1) in the context of interest on delayed returns, reference may also be made to—*CIT v Dina Nath Kathoria*, (1984) 149 ITR 60 (Cal); *V. Krishna Chettiar v CIT*, (1984) 150 ITR 455 (Mad); *Roop Narain Contractor v Addl. CIT*, (1985) 153 ITR 670 (Raj); *Rameswar Goenka v ITO*, (1986) 158 ITR 364 (Gauh); *Lehnu Mal Ram Krishan v ITO*, (1986) 161 ITR 649 (HP); *CIT v Chintamani Saran Nath Sahdeo*, (1986) 162 ITR 255 (Pat); *CIT v Prayaglal Agarwala & Co.*, (1986) 162 ITR 571 (Pat—FB), **overruling** *CIT v Bahri Bros. (P.) Ltd.*, (1976) 102 ITR 443 (Pat); *Todi Paharmal v CIT*, (1987) 163 ITR 540 (Raj); *Rameswar Goenka v ITO*, (1986) Tax LR 341

(Gauh); *Ganesh Dass Sreeram v ITO*, (1987) 35 Taxman 36A (SC), **affirming**, *Ganesh Das Sreeram v ITO*, (1974) 93 ITR 19 (Gauh) [holding that interest can be charged even though no application for extension was filed].

The other view as discussed at page 2710 of Vol. 3 is that interest was chargeable only if the assessee was, on an application made by him, granted extension of time.

This latter view is fortified by the following observations of the Supreme Court in *CIT v M. Chandra Sekhar* [(1985) 151 ITR 433, 438 (SC)]: 'It is apparent also from the language of clause (iii) of the proviso that interest becomes payable only upon the Income-tax Officer acting on an application made by the assessee for the purpose and extending the date for furnishing the return.' The said decision has been distinguished in *Ganesh Dass Sreeram v ITO* [(1987) 35 Taxman 36A, 36E (SC)].

Page 2712: section 139:

After line 8 from top, *add*,—

"In charging interest for delayed return, the advance tax paid by the assessee voluntarily has to be deducted from the amount of tax payable on total income as determined on regular assessment [*CIT v Koomsong Tea Co. Ltd.*, (1985) 156 ITR 384 (Cal)].".

Page 2713: section 139:

On the subject "*Registered firm as well as its partners are liable to the charge of interest*", reference may also be made to *Rameswar Goenka v ITO*, (1986) 158 ITR 364 (Gauh). It may be noted that with effect from 1st April, 1985, the then *Explanation 2* to section 139(8)(a) has been substituted by a new *Explanation 2* by the Taxation Laws (Amendment) Act, 1984 (67 of 1984).

Page 2714: section 139:

After line 12 from top, *add*,—

"*Month, meaning of.*—The term 'month' occurring in the Act and the Rules has not been defined and, therefore, the definition of that term as given in section 3(35) of the General Clauses Act, 1897, should be applied. Thus, the month has to be reckoned according to the British calendar [*B. V. Aswathaiah & Bros. v ITO*, (1985) 155 ITR 422 (Karn)].".

Page 2714: section 139:

On the subject "*Interest is merely of a compensatory, and not of penal, character*", reference may also be made to *Central Provinces Manganese Ore Co. Ltd. v CIT*, (1986) 160 ITR 961, 966 (SC); *CIT v Chandra Sekhar*, (1985) 151 ITR 433, 438 (SC); *Ganesh Dass Sreeram v ITO*, (1987) 35 Taxman 36A, 36F (SC); *Chemmeens v ITO*, (1984) 149 ITR 233 (Ker); *Bir Sein Anand v State of J & K*, (1984) Tax LR (NOC) 6 (J & K).

Pages 2715-2716: section 139:

On the subject "*Reduction or waiver of interest*", reference may also be made to—

(1) *Grindlays Bank Ltd. v CIT*, (1984) 145 ITR 119 (Cal) [charging of interest without considering waiver petition, held not valid].

(2) *Kerala State Cashew Development Corpn. Ltd. v ITO*, (1984) 145 ITR 266 (Ker) ['reduce' and 'waive'—not interchangeable words—even though sufficient cause was found to exist, the Income-tax Officer was held not bound to totally waive the interest in the facts of that case].

(3) *Addl. CIT v F. Ali Ahmed*, (1984) 149 ITR 190 (Del) [in a case covered by rule 117A(v), the Income-tax Officer has to give the assessee an opportunity of showing that he was prevented by sufficient cause from furnishing the return within time].

(4) *Addl. CIT v Chemical Limes*, (1984) 149 ITR 325 (Raj) [interest charged under section 139(8) was waived by passing a rectification order—second rectification order for withdrawing such waiver is not valid].

(5) *CIT v Ashok Trading Co.*, (1986) 160 ITR 663 (Pat); *CIT v Shree Laxmi Trading Co.*, (1986) 160 ITR 697 (Pat); *CIT v M. N. Sengupta & Co.*, (1986) 160 ITR 670 (Pat) [failure to charge interest does not give rise to a presumption of waiver].

(6) *Central Provinces Manganese Ore Co. Ltd. v CIT*, (1986) 160 ITR 961 (SC) [Where an assessee does not make an application to the Income-tax Officer for reduction or waiver of interest charged under section 139(8), no revision petition under section 264 is maintainable before the Commissioner].

Pages 2716-2717: section 139:

At the end of the paragraph titled "*Interest chargeable in assessments under section 148*", *add*,—

"However, a contrary view to the effect that interest under section 139(8) cannot be levied in case of an assessment or reassessment made under section 147 has been taken in *Charles D'Souza v CIT* [(1984) 147 ITR 694 (Karn)]; *B. Babu & Co. v ITO* [(1987) 163 ITR 654 (Karn)].

As a result of the substitution of a new *Explanation 2* to section 139 (8)(a) by the Taxation Laws (Amendment) Act, 1984, with effect from 1st April, 1985, interest can be charged under section 139(8) even where an assessment is made for the first time under section 147. It may be noted that that *Explanation* does not take within its sweep a reassessment under section 147."

Page 2717: section 139:

At the end of line 25 of the paragraphs titled "*Interest payable by R. F.—Explanation 2 to section 139(8)*", *add*,—"Similarly, that *Explanation 2* to section 139(8)(a), as it stood up to 31st March, 1985, has been held to be not unconstitutional also in *Chemmeens v ITO* [(1984) 149 ITR 233 (Ker)]; *Geo Sea Food v ITO* [(1984) 150 ITR 726 (Ker)]; *Wahab Bros. v IAC*

[(1987) 163 ITR 27 (Mad)]. The Supreme Court, in *Ganesh Dass Sreeram v ITO* [(1987) 35 Taxman 36A, 36H (SC)], has approved the view that treating of registered firms as unregistered firms for the purpose of charging of interest for the late filing of returns cannot be said to be arbitrary and violative of Article 14 and has overruled the contrary view taken by the Karnataka High Court in *M. Nagappa's* case [(1975) 99 ITR 32 (Karn)], affirmed in (1981) 129 ITR 516 (Karn)].

Still, where the advance tax duly paid by the registered firm covers the entire amount of tax assessed on the registered firm as such, there is no question of charging the registered firm with interest even though the return is filed by it beyond the time allowed, regard being had to the fact that payment of interest is only compensatory in nature [*Ganesh Dass Sreeram v ITO*, (1987) 35 Taxman 36A, 36H (SC)].”.

Page 2717: section 139:

At the end of the paragraphs titled “*Interest payable by R.F.—Explanation 2 to section 139(8)*”, add,—

“The special provisions about interest payable by a registered firm in the said *Explanation 2* to section 139(8)(a) are no more existent as a result of the substitution of that *Explanation 2* by a new *Explanation 2* by the Taxation Laws (Amendment) Act, 1984, with effect from 1st April, 1985. Thus, for and from assessment year 1985-86, the threshold for calculation of interest in the case of a registered firm under section 139(8) is the tax payable by the registered firm itself and not as if the firm was an unregistered firm.”.

Pages 2717-2718: section 139:

On the subject “*Interest and penalty both possible*”, reference may also be made to the discussion at pages 4869-4870 of Vol. 5 under the same heading.

Page 2727: section 140A:

After line 10 from top, add,—

“The provisions of section 140A, as these stood before 1-4-1976 and those as stands on and after 1-4-1976 have been considered in *CIT v Haji K. Assainar & Co* [(1986) 158 ITR 717 (Ker)] and it has been held that no penalty under the amended section 140A(3) is possible for the default of compliance with the requirements of section 140A(1) as it stood prior to 1-4-1976. Also see, *CIT v Ceanattu Firms*, (1986) 160 ITR 588 (Ker).”

Pages 2729-2730: section 140A:

On the subject “*What led to an amendment in the quantum*”, reference may also be made to—

(1) *Mewar Textiles Mills Ltd. v ITAT*, (1985) 151 ITR 127 (Raj) [provisions of section 140A(3) were held not of confiscatory nature]. Also see, *Mary Issac v IAC*, (1987) 163 ITR 341 (Ker).

(2) *CIT v B. B. Poojara*, (1984) Taxation 75(1)-34 (Bom) [cancellation of penalty by the Tribunal proceeding on the footing that section 140A(3) was non-existent was upheld].

Page 2730: section 140A:

On the subject "*Levy of penalty is not automatic but discretionary*", reference may also be made to *CIT v Mysore Fertilisers Co.*, (1984) 145 ITR 91 (Mad); *Mewar Textiles Mills Ltd., v ITAT*, (1985) 151 ITR 127 (Raj).

Pages 2731-2732: section 140A:

On the subject "*Reasonable cause, a question of fact*", reference may also be made to—

(1) *CIT v Mysore Fertilisers Co.*, (1984) 145 ITR 91 (Mad) [financial difficulty was held to be a reasonable cause].

(2) *CIT v Indo American Electricals Ltd.*, (1985) 155 ITR 63 (Cal) [paucity of funds was held to be a reasonable cause].

(3) *Juggilal Kamlapat Cotton Spng. & Wvg. Mills Co. Ltd. v CST*, (1979) Tax LR 1773 (All) [financial difficulty due to diversion of funds to a sister concern cannot be regarded as a reasonable cause].

Page 2734: section 141:

After serial No. (xi), listing cases dealing with section 141, *add*,—

"(xii) *Smt. Shantibai v CIT*, (1984) 148 ITR 49 (MP).".

Page 2741: section 141A:

After line 19 from top, *add*,—

"V. *The Finance Act, 1987*.—The amendment made by section 74(c) (ii) of the Finance Act, 1987 (11 of 1987), in section 141A(2)(iv) is consequential to the substitution, by that Act, of section 74, with effect from 1st April, 1988."

Page 2741: section 141A:

On the subject "*Provisional assessment to be made within six months of the date of filing the return*", reference may also be made to—

(1) *B. K. Khanna & Co. v Union of India*, (1985) 156 ITR 796 (Del) [under section 141A, it is mandatory for the Income-tax Officer to make a provisional assessment for refund in case the regular assessment was delayed beyond six months].

(2) *Lakhanpal National Ltd. v ITO*, (1986) 162 ITR 240 (Guj) [even though six months' period had already elapsed, the Income-tax Officer was directed to pass an order under section 141A].

(3) *Synthetic & Chemicals Ltd. v ITO*, (1984) 39 CTR (Bom) 247 [under section 141A, the Income-tax Officer has power only to grant refund to the assessee and has no power to determine and demand tax].

Pages 2753-2755: section 142:

On the subject "*Directions for getting accounts audited*", reference may be made to—

(1) *Hind Electricians v D. V. Srivastava*, (1986) 58 CTR (Del) 8 [order under section 142(2A) was withdrawn after the hearing of the writ petition was completed].

(2) *Swadeshi Cotton Mills Co. Ltd. v CIT*, (1987) 32 Taxman 271 (All) [in the facts, the direction for special audit under section 142(2A) was upheld].

Page 2761: section 143:

Before line 2 (except footnote) from bottom, *add*,—

“The amendment made by section 74(c)(ii) of the Finance Act, 1987 (11 of 1987), of section 143(1)(b)(iv) is consequential to the substitution, by that Act, of section 74, with effect from 1st April, 1988.”.

Pages 2768-2769: section 143:

On the subject “*Issue of notice under section 143(2)*”, reference may also be made to—

(1) *CIT v Gyan Prakash Gupta*, (1987) 165 ITR 501 (Raj) [an assessment completed without service of notice under section 143(2) is not void *ab initio* and is not liable to be annulled. Such assessment is liable to be set aside].

Page 2769: section 143:

At the end of the paragraph titled “*Fresh notice under section 143(2) if a revised return is filed*”, *add*,—“Where the assessment is completed without issuing a fresh notice under section 143(2) in respect of the revised return, the assessment is liable to be set aside for a fresh assessment after service of such notice [*Intarcraft India v CIT*, (1985) 154 ITR 662 (Del)].”.

Pages 2779-2780: section 143:

On the subject “*Rules of evidence not to govern*”, reference may also be made to *CIT v Metal Products of India*, (1984) 150 ITR 714 (Punj); *CIT v Chandravilas Hotel*, (1987) 164 ITR 102 (Guj)].

Pages 2780-2781: section 143:

At the end of the paragraphs titled “*Adjournments*”, *add*,—

“Where on the date originally fixed the assessee does not appear and the case is not completed *ex parte* but is adjourned to another date, passing of an *ex parte* order on the adjourned date is invalid unless the adjourned date was intimated to the assessee [Cf. *Kailash Rice Mills v CST*, (1983) Tax LR (NOC) 106 (All)].”.

Pages 2781-2782: section 143:

On the subject “*Credibility of tape-recorded conversation*”, reference may also be made to *Yusufally Esmail Nagree v State of Maharashtra*, AIR 1968 SC 147; *N. Sri Rama Reddy v V. V. Giri*, AIR 1971 SC 1162; *D. R. Punjab Montgomery Transport Co. v Raghuvanshi Pr. Ltd.*, AIR 1983 Cal 343.

Pages 2784-2785: section 143:

On the subject "*Value of an affidavit*", reference may also be made to *Sri Krishna v CIT*, (1983) 142 ITR 618 (All); *CIT v Birbal Khanna & Co.*, (1983) 33 CTR (MP) 240; *Netram Mool Chand v CST*, (1984) Tax LR (NOC) 113 (All).

Pages 2787-2789: section 143:

On the subject "*Material or evidence—what it is?*", reference may also be made to *CIT v Metal Products of India*, (1984) 150 ITR 714 (Punj).

Pages 2792-2793: section 143:

On the subject "*Private sources of information or private enquiries*", reference may also be made to *CIT v Chandravilas Hotel*, (1987) 164 ITR 102 (Guj); *Sri Mahalakshmi Trading Co. v CCT*, (1984) 57 STC 53 (Karn).

Pages 2796-2797: section 143:

On the subject "*Natural justice*", reference may be made to—

(1) *Titaghur Paper Mills Co. Ltd. v State of Orissa: Pinaki Sengupta v State of Orissa*, (1983) 142 ITR 663 (SC) [Merely because the assessing authority refused to grant any further adjournments and proceeded to assess to the best of his judgment, it could not be said that he acted in violation of the rules of natural justice].

(2) *Mohd. Ibrahim Khan v Union of India*, (1985) 155 ITR 10 (AP) [Since the object of the principles of natural justice is to prevent failure of natural justice, the Court will not interfere unless violation of the principles of natural justice resulted in the failure of justice, or resulted in prejudice to a citizen].

(3) *K. C. Joshi v Union of India*, (1987) 163 ITR 597 (SC).

(4) *Institute of Chartered Accountants of India v L. K. Ratna*, (1987) 164 ITR 1,11 (SC) [The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary].

(5) *Manaklal Porwal v CIT*, (1985) 155 ITR 648 (Raj).

(6) *Caetano F. F. de Figueiredo v State*, AIR 1983 Bom 285.

(7) *Bishnu Ram Borah v Parag Saikia*, (1984) Tax LR 570 (SC).

(8) *Dy. Secretary v Moying Ch. Pegu*, AIR 1983 Gauh 55.

(9) *Thokchom Hemabati Devi v State of Manipur*, AIR 1983 Gauh 60.

(10) *Sitaram Vilas Talkies v CTO*, (1985) Tax LR 2443 (Ori).

(11) *Union of India v Tulsiram Patel*, AIR 1985 SC 1416, 1461-63.

(12) *Ogla Tellis v Bombay Municipal Corporation*, AIR 1986 SC 180, 200-201.

(13) *Central Inland Water Transport Corpn. Ltd. v Brojo Nath Ganguli*, AIR 1986 SC 1571.

(14) *Panipat Woollen & General Mills Co. Ltd. v Union of India*, AIR 1986 SC 2082.

- (15) *Suresh Chandra Choudhury v Berhampur University*, AIR 1987 Ori. 38.
(16) *R. S. Dass v Union of India*, AIR 1987 SC 593.
(17) *Sachidanand Pandey v State of West Bengal*, AIR 1987 SC 1109.
(18) *Baldev Singh v State of Himachal Pradesh*, AIR 1987 SC 1239.
(19) *Dr. D. C. Saxena v State of Haryana*, AIR 1987 SC 1463.
(20) *Oramco Chemicals Pr. Ltd. v Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.*, AIR 1987 SC 1564.
(21) *Fancy Dyeing & Printing Works v ITO*, (1987) 166 ITR 54 (Cal).

Page 2798: section 143:

On the subject "*Personal hearing is not necessarily an incident of natural justice*", reference may also be made to—

- (1) *Siemens India Ltd. v ITO*, (1983) 143 ITR 120 (Bom).

Pages 2798-2801: section 143:

On the subject "*Quasi-judicial authorities must observe rules of natural justice*", reference may also be made to—

- (1) *A. S. Suresh Shenoy v WTO*, (1984) 149 ITR 65 (Ker).
(2) *K. A. Karim & Sons v ITO*, (1984) 149 ITR 172 (Ker).
(3) *Mohammadi Begum v CIT*, (1986) 158 ITR 662 (AP).
(4) *Warangal District Co-operative Marketing Society Ltd. v State of Andhra Pradesh*, (1984) Tax LR 2698 (AP).
(5) *Rungta Sons Pr. Ltd. v Collector of Customs*, (1984) Tax LR (NOC) 68 (Cal).
(6) *Ram & Shyam Co. v State of Haryana*, AIR 1985 SC 1147.
(7) *Anand Jaiswal v State of M.P.*, AIR 1987 MP 96.
(8) *Ramanandan Prasad v State of Bihar*, (1983) Tax LR 2758 (Pat—FB).
(9) *Shivaputrappa Channappa Mungoli v Ag ITO*, (1986) 160 ITR 123 (Karn).
(10) *Mohammad Khalil v Excise Commissioner*, (1987) Tax LR 1932 (All).

Pages 2801-2802: section 143:

On the subject "*Right to cross-examine*", reference may also be made to *Kalra Glue Factory v Sales Tax Tribunal*, (1987) 167 ITR 498 (SC).

Pages 2803-2805: section 143:

On the subject "*Assessment bad if there is violation of natural justice*", reference may also be made to—

- (1) *Ishwarlal & Bros. v CIT*, (1983) 143 ITR 517 (Guj).
(2) *Gauri Shankerji Deity v Union of India*, (1984) 145 ITR 67 (MP).

Pages 2805-2806: section 143:

On the subject "*Every quasi-judicial order must be a speaking order*", reference may also be made to—

(1) *Bombay Oil Industries Pr. Ltd. v Union of India*, (1984) Tax LR 2001 (SC).

(2) *Harbhajan Singh Dhalla v Union of India*, AIR 1987 SC 9.

(3) *Lake Palace Hotels & Motels Pr. Ltd. v State of Rajasthan*, AIR 1987 Raj. 8.

(4) *K. Thyagarajan v Parur Municipality*, (1987) 165 ITR 320 (Ker).

Pages 2806-2807: section 143:

On the subject "*Necessity for passing a speaking order*", reference may also be made to—

(1) *Institute of Chartered Accountants of India v L. K. Ratna*, (1987) 164 ITR 1 (SC).

(2) *Siemens (India) Ltd. v ITO*, (1983) 143 ITR 120 (Bom).

(3) *Vasudev Viswanath Saraf v New Education Institute*, AIR 1986 SC 2105.

Pages 2807-2808: section 143:

On the subject "*Quashing an order for failure of natural justice ordinarily leaves the proceedings open*", reference may also be made to *V. Raju v CIT*, (1984) 147 ITR 212 (Mad).

Pages 2809-2810: section 143:

On the subject "*Order cannot be supplemented by fresh reasons*", reference may also be made to *Assam Frontier Tea Ltd. v IAC*, (1987) 164 ITR 253, 262 (Gauh).

Page 2812: section 143:

On the subject "*An assessment order not containing the amount of tax determined to be payable is bad*", reference may also be made to *CIT v R. Giridhar*, (1984) 145 ITR 246 (Karn).

Page 2813: section 143:

After line 2 from top, *add*,—

"Assessment not possible without disposal of the registration application.—

Where an application for registration of the assessee-firm is pending, an assessment cannot be made without first disposing of such registration application. If made without such disposal, the assessment is liable to be set aside and not to be annulled [*Shashikant Kathari & Co. v CIT*, (1986) 158 ITR 60 (Pat)]."

Pages 2814-2815: section 143:

On the subject "*Wrong reference to a section does not per se vitiate an order*", reference may also be made to *Mysore Tobacco Co. Ltd. v CIT*, (1986) 159 ITR 606 (Karn).

Pages 2815-2816: section 143:

On the subject "*Protective assessment*", reference may also be made to—

(1) *Msmt. Zulekha Begum (Khatun) v CIT*, (1984) 149 ITR 398

(Cal) [assessment, though termed as 'protective', was held to be a substantive assessment because no assessment was made on any other person].

(2) *Smt. Dayabai v CIT*, (1985) 154 ITR 248 (MP) [Tribunal was held not justified in confirming a protective assessment]. Also see, *Smt. Dayabai Jain v CIT*, (1986) 55 CTR (MP) 212.

(3) *Sohan Singh v CIT*, (1986) 158 ITR 174 (Del) [completion of protective assessment does not debar reopening assessment of another person if the circumstances so permit].

(4) *G. Gopi Saheb v CIT*, (1987) Tax LR 1065 (AP).

Page 2817: section 143:

After line 22 from top, *add*,—

"Wealth-tax assessment(s), how far binding in income-tax assessment(s).—In *T. Gopi Saheb v CIT* [(1987) Tax LR 1065 (AP)], the wealth-tax returns furnished by the assessee for assessment years 1966-67 to 1973-74 were accepted by the Wealth-tax Officer without prejudice to his findings for the assessment years 1974-75 and 1975-76. It was held, on facts, that it could not be said that the wealth returned by the assessee was implicitly accepted and that the said acceptance explained the source of the disputed income of the relevant years."

Pages 2817-2819: section 143:

On the subject "*Set aside assessments, re-doing of*", reference may also be made to—

(1) *Raj Kishore Prasad v ITO*, (1983) 144 ITR 904 (All) [a fresh assessment order passed in pursuance of a revisional order of the Commissioner is not a valid one where the Commissioner's order itself was set aside by the Tribunal]. Also see, *Govindram Seksaria Charity Trust v ITO*, (1987) 168 ITR 387 (MP).

Page 2820: section 143:

On the subject "*But in making the fresh assessment after appeal, the Income-tax Officer cannot introduce new source of income*", reference may also be made to *CIT v Jawaharlal Nagpal*, (1987) 34 Taxman 333 (MP).

Pages 2823-2826: section 143:

On the subject "*Benami*", reference may also be made to—

(1) *Shyama Charan Saxena v CIT*, (1984) 145 ITR 689 (All) [general principles about *benami* discussed]. Also see, *Arya Confectionery Works v CIT*, (1983) 143 ITR 814 (MP).

(2) *Harinarayan Jamnadas Lakhani v CIT*, (1984) 147 ITR 576 (Bom) [finding of the Tribunal that the wife was partner as a *benamidar* of her husband was upheld]. Also see, *K.P. Abraham v Ag. ITO*, (1987) 163 ITR 120 (Ker); *Uttamchand Jain v CIT*, (1987) Taxation 87(3)-90 (MP).

(3) *ITO v Anandilal Goenka*, (1984) 148 ITR 26 (Cal) [*benami*, a question of fact]. Also see, *CIT v Shri Ram Niwas*, (1984) 149 ITR 403 (Raj); *CIT v Baijnath*, (1985) 153 ITR 327 (Punj); *CIT v Lekhraj & Sons*, (1985) 153 ITR 535 (Mad); *J. A. Trivedi Bros. v CIT*, (1986)

158 ITR 705 (MP); *CWT v Sardara Singh*, (1987) 163 ITR 723 (All); *Rajasthan Textile Industries v CIT*, (1987) 164 ITR 732 (Raj); *DLF United Ltd. v CIT*, (1986) 159 ITR 339 (Del); *Sohan Singh v CIT*, (1986) 158 ITR 174 (Del); *CIT v Hassina Begum*, (1986) Taxation 82(3)-402 (Cal); *Bishnu Ram Borah v Parag Saikia*, (1984) Tax LR 570 (SC); *CIT v Gulab Das*, (1986) 159 ITR 24 (Raj); *CIT v Mittal Engineering Co.*, (1987) 163 ITR 415 (Punj).

(4) *Uttar Pradesh State Government v Smt. Ram Pearl Gupta*, AIR 1983 All. 296 [*benami*, burden on whom lies]. Also see, *J.A. Trivedi Bros. v CIT*, (1985) 158 ITR 705 (MP); *Bank of India v Union of India*, (1987) 167 ITR 668 (Del).

Page 2827: section 143:

On the point of *res judicata*, after serial No. (12), *add*,—

- “13. *Prominent Motors (India) v CIT*, (1983) 140 ITR 326 (Del).
14. *CIT v Shri Agastyar Trust*, (1984) 149 ITR 609 (Mad).
15. *CIT v Vijai Kumar Mishran*, (1985) 156 ITR 456 (All).
16. *CIT v Godavari Corporation Ltd.*, (1985) 156 ITR 835 (MP).
17. *CIT v Manaklal Porwal*, (1986) 160 ITR 243 (Raj).
18. *Baijnath Brijmohan & Sons Pr. Ltd. v CIT*, (1986) 161 ITR 234 (Bom).
19. *K.P. Abraham v Ag. ITO*, (1987) 163 ITR 120, 123 (Ker).
20. *Ambika Prasad Sonar v CIT*, (1987) 168 ITR 444 (All).
21. *Raza Textiles Ltd. v CIT*, (1987) 34 Taxman 130 (All).

The decision in *K. Sadasiva Krishnarao*, (1983) 33 CTR (AP) 34 has also been reported at (1983) 144 ITR 270 (AP) and the decision in *CIT v K. S. Subbiah Pillai*, (1983) 33 CTR (Mad) 327 has also been reported at (1984) 147 ITR 87 (Mad).”.

Page 2827: section 143:

At the end of the paragraph titled “*Principles of estoppel and res judicata may have application in case of writ decisions*”, *add*,—

“Neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of the Supreme Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding, namely, a writ proceeding before the High Court, merely on the basis of an uncertain assumption that the issues must have been decided by the court at least by implication. It is not correct or safe to extend the principle of *res judicata* or constructive *res judicata* to such an extent so as to found it on mere guesswork [*Indian Oil Corporation Ltd. v State of Bihar*, (1987) 167 ITR 897, 901 (SC)].”.

Pages 2828-2829: section 143:

On the subject “*No estoppel against law*”, reference may also be made to—

- (1) *CIT v Travancore Timbers & Products*, (1984) 149 ITR 450, 456

(Ker), special leave petition dismissed by the Supreme Court: (1986) 161 ITR (St.) 131 (SC).

(2) *CWT v Meattles Pr. Ltd.*, (1985) 156 ITR 569 (Del) [a mistaken view of a statutory provision in an income-tax assessment does not estop from taking a correct view in a wealth-tax assessment].

(3) *A. K. Jose v Sivan Pillai*, AIR 1984 SC 921.

(4) *Indra Bahadur Singh v Bar Council*, AIR 1986 All. 56.

(5) *Jain Shudh Vanaspati Ltd. v Union of India*, (1984) Tax LR (NOC) 26 (Del).

Page 2831: section 143:

After serial No. 31, listing the cases on the point of "*Promissory estoppel*", add,—

- "32. *Bombay Conductors & Electricals Ltd. v K. Chandramouli*, (1984) 145 ITR 272 (Del—FB).
33. *Bansal Exports Pr. Ltd. v Union of India: Indo-Foreign Import & Export Corpn. v Union of India*, (1984) 145 ITR 642 (Del—FB).
34. *Addl. CIT v Smt. Indira Bai*, (1985) 151 ITR 692 (AP).
35. *Union of India v Godfrey Philips India Ltd.*, (1986) 158 ITR 574 (SC), disapproving certain observations in *Jeet Ram v State of Haryana*, AIR 1980 SC 1285.
36. *Bakul Cashew Co. v STO*, (1986) 159 ITR 565 (SC).
37. *Bakul Oil Industries v State of Gujarat*, (1987) 165 ITR 6 (SC).
38. *Pournami Oil Mills v State of Kerala*, (1987) 165 ITR 57 (SC).
39. *Gujarat State Financial Corpn. v Lotus Hotels Pr. Ltd.*, AIR 1983 SC 848.
40. *Express Newspapers Pr. Ltd. v Union of India*, AIR 1986 SC 872, 946.
41. *Dunbar Mills Ltd. v Union of India*, (1987) Tax LR 1886 (Cal).
42. *Wellworth Plastics & Chemicals v State of Kerala*, (1986) Tax LR 2203 (Ker).
43. *D. R. Kohli v Atul Products Ltd.*, (1985) Tax LR 2489 (SC).
44. *M. Jamal Co. v Union of India*, (1985) 6 Excise & Customs Cases 292 (Mad).
45. *Tapti Oil Industries v State of Maharashtra*, (1984) 56 STC 193 (Bom—FB)."

Pages 2833-2834: section 143:

On the subject "*Admission by the counsel of the assessee*", reference may also be made to—

(1) *CIT v Jyoti Tube-well Co.*, (1987) 164 ITR 301 (Pat) [concession made by counsel on a question of fact binds the party].

(2) *Rupak Ltd. v Registrar of Companies*, (1985) Tax LR 2130 (Pat) [admission on the point of law made by the counsel does not bind the party].

Page 2837: section 143:

On the subject "*Assessment proceedings—no leave necessary*", reference may also be made to *ITO v Official Liquidator*, (1985) 155 ITR 510 (Ker—FB); *Shahdara (Delhi)-Saharanpur Light Railway Co. Ltd. v ITO*, (1987) 34 Taxman 68 (Cal).

In *State of Kerala v Official Liquidator* [(1987) Tax LR 1730 (Ker)], it has been held that the company court is not competent to act outside the confines of the Companies Act, 1956, and make an order of declaration as to the invalidity of an assessment order.

Page 2838: section 143:

On the subject "*Recovery proceedings—leave necessary*", reference may also be made to *STO v Byford Ltd.*, (1984) 145 ITR 537 (Del); *ITO v Official Liquidator*, (1985) 155 ITR 510 (Ker—FB). Cf. *Life Insurance Corporation of India v Asia Udyog (P.) Ltd.*, (1984) 145 ITR 520 (Del—FB).

Page 2838: section 143:

On the subject "*Charging of interest—leave necessary*", reference may also be made to *ITO v Official Liquidator*, (1985) 155 ITR 510 (Ker—FB), holding that there is no need of prior sanction of the winding up court for assessment of interest for delayed payment of tax under section 220(2). Proceedings for recovery will, however, be hit by the provisions of section 446(1) of the Companies Act, 1956, unless leave of the winding-up court is sought for and obtained prior to the commencement of the recovery proceedings. Recovery effected without prior leave of the company court would be invalid. In taking that view, the Kerala Full Bench has overruled *ITO v Official Liquidator* [(1982) 134 ITR 132 (Ker)]. In view of the Kerala Full Bench, the decision in *Official Liquidator v ITO* [(1984) 150 ITR 148 (Ker)] is no more good law on the point. Also see, *ITO v Official Liquidator*, (1986) 158 ITR 791 (Ker), affirming, *ITO v Official Liquidator*, (1982) 134 ITR 136 (Ker); *CIT v Golcha Properties (P.) Ltd.*, (1987) 167 ITR 737 (Raj).

Page 2842: section 144:

On the subject "*Fails—implication of*", the decision in *Swadeshi Polytex Ltd. v ITO* [(1981) 127 ITR 287 (All)] has been reversed by the Supreme Court in *Swadeshi Polytex Ltd. v ITO* [(1983) 144 ITR 171 (SC)]. The Supreme Court has ruled in that case that if the chartered accountant nominated by the Commissioner to audit the accounts of the assessee under section 142(2A) declines to undertake the audit for a frivolous reason, obviously the assessee cannot be held responsible and there is no default or

failure to comply with the directions issued under section 142(2A) on the part of the assessee so as to attract the provisions of section 144(b) for making a best judgment assessment.

Pages 2843-2844: section 144:

At the end of the paragraphs titled "*The first default—failure to furnish a return in spite of demand*", add,—

"Where an assessee does not furnish a return in response to notice under section 148, a best judgment assessment under section 144 is permissible [*Fatehchand Narsingdas (Export Firm) v CIT*, (1987) Taxation 85(3)-290 (Bom)]. This is so even where the assessee has already furnished a return in the status of a different entity, e.g., a Hindu Undivided Family [*CIT v K. L. Venugopal*, (1986) 162 ITR 551 (Karn)].

Also see, *Shivaputrappa Channappa Mungoli v AgITO*, (1986) 160 ITR 123 (Karn)."

Pages 2847-2848: section 144:

On the subject "*Another post-default opportunity to rebut any adverse evidence, whether needed?*", reference may also be made to *Dhanalakhmi Pictures v CIT*, (1983) 144 ITR 452 (Mad), which has followed the view taken by the Kerala High Court in *T. C. N. Menon v ITO*, (1974) 96 ITR 148 (Ker).

Pages 2849-2850: section 144:

On the subject "*Best judgment estimates*", reference may also be made to *Kalpnaath Rai v CIT*, (1985) 151 ITR 281 (Pat); *K. P. Abraham v Ag. ITO*, (1987) 163 ITR 120 (Ker).

Page 2851: section 144:

At the end of the paragraphs titled "*Best judgment assessment—when cannot be disturbed*", add,—

"In *Ram Prakash v CIT* [(1983) 15 Taxman 533 (All), special leave petition dismissed by the Supreme Court: (1984) 147 ITR (St.) 2], the best judgment assessment made by the Income-tax Officer applying the profit rate earned by the assessee himself in earlier year was upheld by the Tribunal. It was held that the Tribunal's findings in this regard were findings of fact based on appraisal of material on record and were not vitiated by any error of law."

Page 2852: section 144:

On the subject "*Question of law*", reference may also be made to *CIT v Ganga Prasad Bachchulal*, (1983) 14 Taxman 318 (MP).

Pages 2852-2853: section 144:

At the end of the paragraph titled "*When a writ lies?*", add,—

"The court, in exercise of its jurisdiction under article 226, cannot con-

duct an enquiry with regard to the quantum and make its own estimate in the matter [*K. P. Abraham v Ag. ITO*, (1987) 163 ITR 120 (Ker)].”.

Page 2855: section 144B:

After line 6 from top, *add*,—

‘Legislative amendment.—The scope and effect of the amendment made by the Taxation Laws (Amendment) Act, 1984, in section 144B have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

‘Discontinuance of the procedure under section 144B of the Income-tax Act relating to reference to Inspecting Assistant Commissioners.—16.1 Under section 144B of the Income-tax Act, the Income-tax Officer is required to send a draft of the assessment order to the assessee in cases where the aggregate amount of the variation to the returned income proposed by the Income-tax Officer exceeds a fixed amount, which is currently Rs. 1 lakh. If the assessee objects to the variation proposed by the Income-tax Officer, the objections are referred by the Income-tax Officer to the Inspecting Assistant Commissioner who is authorised to give appropriate directions to the Income-tax Officer for the modification of the draft assessment order.

16.2 The Amending Act has made an amendment in sub-section (1) of section 144B to secure that the provisions of the said section shall apply only in those cases where the Income-tax Officer proposes to make, before 1st October, 1984, any variation to the returned income. In the result, the provisions of section 144B shall cease to apply in cases where any variation to the returned income is proposed to be made by the Income-tax Officer after 30th September, 1984.’.

Directions possible on draft assessment order passed before 1-10-1984.—As a result of the amendment of section 144B by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), the Income-tax Officer is debarred from making a draft assessment order on or after 1st October, 1984. The Inspecting Assistant Commissioner is within his jurisdiction to give directions with reference to the draft assessment order passed before 1-10-1984, whether such order is pending before him on 1-10-1984 [*Kripal Singh v CIT*, (1987) 164 ITR 144 (All)] or such order was properly and validly forwarded to him on or after that date. In such cases, the Income-tax Officer would be within his jurisdiction to pass the final assessment order consequent upon receipt of such directions.”.

Page 2855: section 144B:

At the end of the paragraph titled “*Prescribed amount*”, *add*,—

“The expression ‘the income or loss returned’ in section 144B(1) refers to total income or loss as shown in the return furnished by the assessee and not to the amounts shown under different heads of income. Thus, if the variation in total income or loss exceeds the prescribed amount of

Rs. 1,00,000 only then section 144B comes into operation and not otherwise [*New India Investment Corpn. Ltd. v ITO*, (1983) 143 ITR 909 (Cal)].”.

Page 2856: section 144B:

After line 5 from top, *add*,—

“Section 144B not attracted in the case of a best judgement assessment.—The obligation as to the making of a draft assessment order and reference to the Inspecting Assistant Commissioner under section 144B arises if the assessment is made under section 143(3) in a case where the variation exceeds rupees one lakh and not where an *ex parte* best judgement assessment is made under section 144 [*H. S. Imam v CIT*, (1987) 34 Taxman 425, 429 (AP)].”.

Pages 2858-2859: section 144B:

On the subject “*Failure to observe the procedure of section 144B in deserving cases—revision under section 263 not possible merely on that account*”, reference may also be made to *Nandlal Bhandari & Sons v CIT*, (1984) 147 ITR 710 (MP); *V.G. Krishnamurthy v CIT*, (1985) 152 ITR 683 (Karn); *CIT v Princess Usha Trust*, (1984) 145 ITR 203 (MP).

Page 2859: section 144B:

On the subject “*Non-compliance with the provisions of section 144B—whether the resultant order is a nullity?*”, reference may also be made to *Kimtee v CIT*, (1985) 151 ITR 73 (MP); *G.R. Steel & Alloys Pr. Ltd. v CIT*, (1985) 152 ITR 220 (Karn).

In the facts of *K. Ashok Kumar v CIT* [(1986) 162 ITR 543 (Karn)], the Tribunal was held justified in directing the Income-tax Officer to initiate proceedings *de novo* from the stage of section 144B after issuing notices to all the legal representatives.

Page 2859: section 144B:

At the end of the page, *add*,—

“*Right of appeal*.—The mere fact that the assessee does not file any objection to the draft assessment order does not debar the assessee from preferring an appeal against the final assessment order [*Indian Aluminium Co. Ltd. v CIT*, (1986) 162 ITR 788 (Cal)].

Writ proceedings.—In the facts of *New India Investment Corpn. Ltd. v ITO* [(1983) 143 ITR 909 (Cal)], the invoking of the writ jurisdiction by the assessee, even after filing an appeal, was held justified as the assessee was challenging the jurisdiction of the Income-tax Officer and the litigation could be shortened and multiplicity of proceedings would be avoided.

In *Omrakash Premchand & Co. v IAC* [(1984) 147 ITR 46 (MP)], the error in the original draft assessment order was rectified by the Income-tax Officer so as to bring the case within the requirements of section 144B.

Such rectification order was challenged in appeal. Initiation of proceedings by the Inspecting Assistant Commissioner on the basis of the rectified order was challenged in writ proceedings. It was held that it was not a fit case for writ jurisdiction as adequate alternative remedy by way of appeal/reference was available after final assessment.”.

Pages 2861-2863: section 145:

On the subject “*Two methods of accounting, the cash system and the mercantile system*”, reference may also be made to—

(1) *CIT v Vijay Laxmi Trading Co. Ltd.*, (1984) 147 ITR 372 (Raj) [interest was held taxable on accrual basis].

(2) *Express Newspapers Ltd. v CIT*, (1984) 148 ITR 484 (Mad) [interest was held taxable on mercantile basis].

(3) *Beni Prasad Sidh Gopal v CIT*, (1984) 148 ITR 760 (All) [income held not accrued on the basis of the book-entries in the account books].

(4) *CIT v Bihar State Agro Industries Development Corporation*, (1986) 158 ITR 96 (Pat) [interest on hire-purchase was held taxable on the accrual basis and not on the cash basis].

(5) *CIT v Barjatya Family Charitable Trust*, (1987) 163 ITR 269 (Raj) [assessee following cash system of accounting is required to disclose only income which it had received during the relevant year].

Pages 2863-2864: section 145:

At the end of the paragraph titled “*Hybrid system of accounting*”, add,—

“It is well-established that even apart from the two systems of accounting, namely, mercantile and cash, there is a possibility of an assessee adopting a hybrid system of accounting if it is possible to ascertain the true profits on the basis of such accounting [*CIT v North Arcot District Co-operative Spng. Mills Ltd.*, (1984) 148 ITR 406, 411 (Mad)]. In that case, it was held that though the assessee had generally adopted the mercantile system of accounting, so far as the transaction of import of machinery from the foreign seller was concerned, it had been regularly showing the payment of interest in the year in which interest was actually paid and not in the year in which the interest legally fell due. Thus, with regard to interest payment, the assessee had adopted cash basis and not mercantile basis. Also see, *Addl. CIT v Rattan Chand Kapoor*, (1984) 149 ITR 1 (Del); *CIT v Guranditta Mal Shanti Parkash Zira*, (1987) 164 ITR 774 (Punj).”.

Pages 2868-2869: section 145:

On the subject “*Choice with the assessee*”, reference may also be made to *CIT v Hirji Bharmal*, (1983) 34 CTR (MP) 312; *CIT v Margadarshi Chit Funds (P.) Ltd.*, (1985) 155 ITR 442 (AP).

Pages 2871-2872: section 145:

On the subject "*Bona fide change of method permissible*", reference may also be made to *CIT v Shriram Associated Bearing P. Ltd.*, SLP Civil (No.) 6665 of 1982: (1984) 150 ITR (St.) 77 (SC); *CIT v Hind-Lamps Ltd.*, (1987) Taxation 85(3)-225 (All).

In the facts of *CIT v Kerala Financial Corporation* [(1985) 155 ITR 228 (Ker)] and *CIT v Kerala Financial Corporation Ltd* [(1985) 155 ITR 246 (Ker)], the assessee started to credit certain interest in 'interest suspense account' instead of interest account itself. It has been held that the change adopted by the assessee was not a change in the method of accounting. It could at best be said that the assessee had introduced a change in the modality of accounting. The assessee continued to account the interest on accrual basis.

Also see, *Pradeshia Industrial Investment Corporation of U.P. Ltd. v CIT*, SLP (Civil) No. 2047 of 1986: (1987) 164 ITR (St.) 151 (SC).

Page 2874: section 145:

After serial No. (3), giving illustrative cases where change of method was held proper, *add*,—

"(4) *CIT v National & Grindlays Bank Ltd.*, (1984) 145 ITR 457 (Cal) [change of method from valuing closing stock at market price to valuing closing stock at cost or market price, whichever is lower, held proper].

(5) *CIT v Carborandum Universal Ltd.*, (1984) 149 ITR 759 (Mad) [change of method of valuing closing stock from total cost to direct cost, held proper].

(6) *CIT v Ganga Charity Trust Fund*, (1986) 162 ITR 612 (Guj) [*bona fide* change over from mercantile to cash system, held proper].

(7) *Triveni Engg. Works Ltd. v CIT*, (1987) 167 ITR 742 (All) [change over from valuing closing stock at market price to valuing the same at cost price or market price, whichever was lower, held proper].

Pages 2887-2888: section 145:

On the subject "*Deviation of regular method held not possible*", reference may also be made to *CIT v Sankarapandia Asari & Sons*, (1987) 165 ITR 616 (Mad).

Page 2893: section 145:

After the second paragraph, *add*,—

"Valuation of stock in case of a dissolved firm.—For the purpose of assessment of a dissolved firm under section 189 of the 1961 Act, the income of the firm has to be computed with reference to the market value of the closing stock and not the book value of such stock. On the other hand, in the case of a continuing business, it is open to the assessee-firm to value its stock-in-trade either at cost or market value, whichever is lower.

This privilege does not extend to a dissolved firm [*Popular Workshops v CIT*, (1987) 166 ITR 348, 351 (Ker)].

Valuation of stock of a controlled commodity.—In *CIT v Mahalaxmi Sugar Mills Co. Ltd.* [(1987) 165 ITR 97 (Del)], the valuation of the closing stock on the last day of the accounting year, of a commodity whose price was controlled by the Government, on the basis of the effective rate fixed for the first day of the next accounting year was upheld because the same was lesser from the effective rate fixed for the last day of the accounting year concerned.”.

Pages 2894-2895: section 145:

At the end of the paragraph titled “*No obligation to make maximum profits*”, add,—

“It may be noted that the observation on tax avoidance in *CIT v A. Raman & Co.* [(1968) 67 ITR 11 (SC)] has been disapproved in *McDowell & Co. Ltd. v CTO* [(1985) 154 ITR 148 (SC)].”.

Page 2895: section 145:

On the subject “*Purchase of goods above the market price*”, reference may also be made to *Godavari Sugar Mills Ltd. v CIT*, (1985) 155 ITR 306 (Bom).

In *Godavari Sugar Mills Ltd. v CIT* [(1987) Taxation 86(3)-3 (Bom)], it has been held that for the purposes of ascertaining manufacturing profits, the assessee is not entitled to put a higher purchase price for the sugarcane grown in its own farm and utilised by it in its sugar factory than that paid to the outsiders.

Page 2896: section 145:

After line 28 of the paragraphs titled “*Elements of section 145 provisions*”, add,—

“In the facts of *Arya Confectionery Works v CIT* [(1983) 143 ITR 814 (MP)], it has been held that the proviso to section 145(1) was properly invoked. Also see, *Nisar Bros. v CIT*, (1986) 162 ITR 677 (Raj).

In the facts of *R.J. Trivedi (HUF) v CIT* [(1983) 144 ITR 877 (MP)], it has been held that the finding reached by the Tribunal, in sustaining the rejection of books under section 145(2), was vitiated by taking into account irrelevant and non-existent facts and by omission to consider relevant facts and circumstances.

In the facts of *CIT v Thakurmal Bajranglal* [(1987) Taxation 86(3)-285 (Raj)], it has been held that the Tribunal was not justified in holding that the proviso to section 145(1) was resorted to in the instant case and it should have decided the matter on the basis of section 145(2).”.

Pages 2899-2900: section 145:

On the subject “*A clear finding necessary*”, reference may also be made to *Mrs. D.G. Graig Jones v State of Karnataka*, (1984) 148 ITR 297

(Karn); *CIT v Margadarsi Chit Funds (P.) Ltd.*, (1985) 155 ITR 442 (AP); *J. A. Trivedi Bros. v CIT*, (1986) 158 ITR 705 (MP); *Inder Mal Triloki Prasad v CST*, (1983) Tax LR 3017 (All).

Pages 2901-2903: section 145:

On the subject "*Non-maintenance of a stock register*", reference may also be made to *CIT v Pareck Bros.*, (1987) 167 ITR 344 (Pat) [holding that the proviso to section 145(1) was applicable as the assessee was not maintaining any day-to-day stock account and did not furnish any distinctive numbers either of purchases or sales to the Income-tax Officer]. Also see, *Mulji Udhavji v CIT*, (1984) 145 ITR 575 (MP); *Gyanchand Tarachand v CIT*, (1983) 15 Taxman 531 (MP); *Bharat Saw Mills v CST*, (1984) Tax LR (NOC) 57 (MP).

Page 2903: section 145:

On the subject "*Inflation of stocks in statement given to bank*", reference may also be made to the following cases where the rejection of accounts and estimation of income were upheld on that account:

(1) *CIT v Ashok Textiles (P.) Ltd.*, (1983) 141 ITR 785 (Ker), special leave petition dismissed by the Supreme Court: (1982) 138 ITR (St.) 1.

(2) *Jai Chand Kanji & Co. v CIT*, (1986) 157 ITR 451 (Raj).

Also see, *Haryana Iron & Steel Rolling Mills v CIT*, (1983) 35 CTR (Punj) 168.

On the other hand, in the following cases, the rejection of accounts and estimation of income were not upheld:

(1) *CIT v Baij Nath*, (1984) 148 ITR 135 (Punj).

(2) *Uganda Industries Co. v CIT*, (1986) 158 ITR 567 (Guj).

(3) *CIT v Prem Singh & Co.*, (1987) 163 ITR 434 (Del).

Also see, *CIT v Khalsa Engg. Works*, (1987) 163 ITR 436 (Punj).

Pages 2912-2914: section 145:

On the subject "*Estimates, after rejection of the book figures*", reference may also be made to *M.K.C. Nabeesa Beevi v Ag ITO*, (1987) 163 ITR 78 (Ker); *V. B. Gadkari v STO*, (1985) 59 STC 362 (MP); *Hira Lal Ramchandra v CST*, (1983) Tax LR (NOC) 136 (All).

Page 2914: section 145:

On the subject "*Estimates based on comparable cases*", reference may also be made to *Ratanlal Omprakash v CIT*, (1984) 17 Taxman 201 (Ori).

Pages 2916-2917: section 145:

On the subject "*Estimating contractor's profit at a flat rate*", reference may also be made to the following cases [holding that in estimating contractor's profit at a flat rate, the value of the materials supplied to him by the contractee is not to be taken into account]:

- (1) *Srichand Agarwala v CIT*, (1984) 148 ITR 34 (Ori).
- (2) *Kalp Nath Rai v CIT*, (1985) 151 ITR 281 (Pat).
- (3) *CIT v Ram Dayal Modi & Sons*, (1985) 151 ITR 481 (Raj).
- (4) *CIT v Sharma & Co.*, (1985) 153 ITR 605 (Raj).
- (5) *CIT v Rameshwardas Nasinghdass & Co.*, (1985) 155 ITR 270 (Raj).
- (6) *Addl. CIT v Hemandas Dharajmal*, (1985) 155 ITR 533 (Raj).
- (7) *CIT v P. N. Mukherjee*, (1986) 157 ITR 82 (Cal).
- (8) *Kundan Lal & Sons v CIT*, (1986) 157 ITR 651 (Del).
- (9) *CIT v Azad Builders*, (1986) 162 ITR 643 (Pat).
- (10) *CIT v Azad Builders*, (1986) 162 ITR 647 (Pat).
- (11) *CIT v S. P. Viz Construction Co.*, (1987) 163 ITR 666 (Pat).
- (12) *CIT v S. P. Viz Construction Co.*, (1987) 163 ITR 668 (Pat).
- (13) *CIT v Jaiswal Verma Construction Co.*, (1987) 164 ITR 561 (Pat).
- (14) *Bohi Construction Co. v CIT*, (1987) 166 ITR 737 (Pat).
- (15) *CIT v Mohanlal Kansal*, (1985) Taxation 77(1)-4 (Punj).
- (16) *CIT v S. P. Viz Construction Co.*, (1987) 168 ITR 250 (Pat).

Also see, for respective facts and decision:

- (1) *Addl. CIT v Som Dutta & Co.*, (1983) 35 CTR (Pat) 284.
- (2) *CIT v Jaiswal Verma Construction Co.*, (1987) 164 ITR 561 (Pat).

Page 2918: section 145:

After line 28 from top, add,—

“Other cases about rejection of accounts, G.P. rate, etc.—Reference may be made to the following cases about rejection of accounts, estimation of gross profit rate, etc.:—

(1) *Akhtari Begum & Sons v CIT*, (1984) 145 ITR 295 (MP) [assessee deriving income from plying passenger buses—Tribunal held justified in reducing net profit rate and adding luggage receipts separately].

(2) *Mulji Udhavji v CIT*, (1984) 145 ITR 575 (MP) [assessee carrying on business of selling iron hoops and *bardana* strips—increase in gross profit rate was held justified in view of past history of the assessee].

(3) *CIT v Kashiram Agrawalla*, (1984) 147 ITR 797 (Pat) [sales tax liability held not deductible from gross turnover to arrive at gross profit].

(4) *Motiram Pesumal v CIT*, (1984) 149 ITR 786 (MP) [wholesalers in potato and onions—G.P. rate of 6% was held justified]. Also see, *Motiram Pasumal v CIT*, (1984) 145 ITR 734 (MP).

(5) *CIT v Varieties*, (1985) 154 ITR 293 (Pat) [assessee maintained combined trading account for readymade garments and other cloth as well—held, addition in relation to readymade garments portion was not justified].

(6) *CIT v M. K. Bros.*, (1987) 163 ITR 249 (Guj) [purchases made the assessee were held not bogus].

(7) *C. P. Kushalappa & Sons v CIT*, (1987) 163 ITR 739 (Karn) [Tribunal held not justified in upholding the addition in regard to the lorry hire charges as there was no material in that regard].

(8) *K. T. Saoji v CIT*, (1987) 165 ITR 397 (Bom) [assessee dealing in medicinal products manufactured by different manufacturers—addition maintained by the Tribunal on the basis of 12% gross profit rate was held not justified].

(9) *Ram Prakash v CIT*, (1983) 15 Taxman 533 (All), special leave petition dismissed by the Supreme Court: (1984) 147 ITR (St.) 2 [gross profit rate as in last year was applied].

(10) *CIT v Pareek Bros.*, (1987) 167 ITR 344 (Pat) [gross profit rate should be worked out on gross turnover excluding the amount of sales tax, as there is no element of profit on the amount of sales tax].

(11) *Orchha Transport Co. v CIT*, (1987) 167 ITR 561 (MP) [holding that expenses claimed by the assessee against the luggage receipts were covered by the expenses allowed against the passengers receipts].

(12) *Dinanath Dubey v CIT*, (1986) 57 CTR (MP) 233 [rate of earlier year was applied in the current year].

(13) *Naunet Food Industries v CST*, (1982) 50 STC 380 (All) [non-production, at the time of survey, of cash book maintained, rejection of account books was upheld].

(14) *CST v Shyam Lal & Co.*, (1984) Tax LR (NOC) 114 (All) [non-production of account books at the time of survey, held no ground for rejecting those books outright].”.

Page 2919: section 145:

In lines 3-4 of serial No. (8), after “130 ITR 421 (Del)”, “; *Bhilai Motors v CIT*, (1984) 41 CTR (MP) 125”.

Page 2919: section 145:

After serial No. (11), illustrating questions of fact, *add*,—

“(12) Whether the accounts should be accepted and what should be the extent of addition to be made are questions of fact [*CIT v Anchor Pressing Pr. Ltd.*, (1986) 160 ITR 597 (Del)]. Also see, *Chaudhury Surja Ram Cotton Ginning and Pressing Factory v CIT*, SLP (Civil) No. 9324 of 1980: (1983) 143 ITR (St.) 39 (SC).

(13) Whether to believe the statement of a particular person is a pure question of fact [*Nisar Bros. v CIT*, (1986) 162 ITR 677 (Raj)].

Also see, *CIT v Jain Rice Mills*, (1983) 15 Taxman 100 (Punj).

These were held to be finding(s) of fact:—

(1) The finding that the alleged approval memo issued to a person constituted suppressed sales is one of fact [*Nisar Bros. v CIT*, (1986) 162 ITR 677 (Raj)].

(2) The finding that the proviso to section 145(1) was applicable because the value of certain item was not shown in the account books is one of fact [*Nisar Bros. v CIT*, (1986) 162 ITR 677 (Raj)].

(3) The finding that the distribution amongst the partners was a distribution of the assets of the firm on the date of dissolution and not a sale is one of fact [*CIT v Ashish Coal Coke Traders*, (1987) 163 ITR 174 (MP)].

(4) The finding that the excessive consumption was due to substantial damage to the plant is one of fact [*CIT v Man Structural Ltd.*, (1987) 164 ITR 99 (Raj)].

(5) The finding about applicability of a particular rate of net profit is one of fact [*CIT v C. P. Handa*, (1986) 57 CTR (All) 236].

(6) Finding about gross profit rate and that about extent of disallowance of expenses are findings of fact [*Variety Hosiery Mills v CIT*, (1984) 39 CTR (Punj) 313]. Also see, *Ratanlal Omprakash v CIT*, (1984) 41 CTR (Ori) 299.

(7) The finding that the rejection of accounts was not possible is one of fact [*CIT v Electra (Jaipur) Pr. Ltd.*, (1986) 58 CTR (All) 205].

(8) The finding that the assessee had not kept any record showing consumption of various components which went into the manufacture of the finished product day by day is one of fact [*Freewheels India Ltd. v CIT*, (1987) 167 ITR 877 (Del)].

Pages 2919-2920: section 145:

On the subject "*These are questions of law*", reference may also be made to *CIT v Saligram Premnath*, (1984) 148 ITR 302 (Punj); *Captain K. C. Saigal v CIT*, (1987) 64 CTR (Del) 27.

Page 2921: section 146:

After line 20 from top, *add*,—

"No power of reopening u/s. 146 in respect of best judgment assessment made on or after 1-10-1984.—The Taxation Laws (Amendment) Act, 1984 (67 of 1984), has amended section 146 by inserting, in the opening portion of section 146, the words 'before the 1st day of October, 1984' to qualify the subject-matter 'assessment'.

As a result of the above amendment, the assessee's right to make an application for cancellation of an *ex parte* best judgment assessment made under section 144, and the Income-tax Officer's power to cancel such assessment on proper grounds, have been taken away in cases where such assessment has been made on or after 1st October, 1984. This is another retrograde step compelling an assessee to prefer an appeal or to make an application for revision under section 264 even in cases where there has been good and sufficient ground for non-appearance or non-compliance. This is contrary to one of the avowed objects, namely, "these amendments are intended mainly to...avoid inconvenience to taxpayers, reduce litigation....", as stated in the "Statement of Objects and Reasons" appended to the Taxation Laws (Amendment) Bill, 1984.

Here is another instance of the untimely death of a very well-intentioned provision.

The scope and effect of the amendment made by this Act in section 146 have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

'Withdrawal of the power of Income-tax Officer to cancel ex parte assessment and make fresh assessment.—17.1 Section 144 of the Income-tax Act empowers the Income-tax Officer to make an *ex parte* best judgment assessment in cases where the assessee fails to furnish the return of income or to comply with the statutory notices issued by the Income-tax Officer in the course of assessment proceedings. The *ex parte* assessment can be cancelled by the Income-tax Officer under section 146 of the Income-tax Act if the assessee is able to show that he was prevented by sufficient cause from making the return or he did not receive the statutory notices or did not have reasonable opportunity to comply with, or was prevented by sufficient cause from complying with, such notices.

17.2 The Amending Act has made an amendment in sub-section (1) of section 146 of the Income-tax Act to secure that the provisions of the said section shall apply only in cases where an assessee has been assessed under section 144 before 1st October, 1984.'".

Page 2922: section 146:

On the subject "*No condonation of delay in filing section 146(1) application is possible*", reference may also be made to *Har Narain Textiles P. Ltd. v CIT*, (1985) 22 Taxman 339 (All), relying on *Smt. Sushila Devi v Ramanandan Prasad*, AIR 1976 SC 177.

Page 2928: section 146:

At the end of the paragraph titled "*Both remedies resorted to—disposal of one—effect*", add,—

"However, in *R. B. Shreeram Durgaprasad (Mining Firm) v CIT* [(1987) 32 Taxman 592 (Bom)], the Appellate Assistant Commissioner confirmed the assessment order in the quantum appeal. But, he allowed the assessee's appeal against order rejecting application under section 146. In further appeals, the Tribunal noted that the order of the Income-tax Officer making a best judgment assessment merged in the appellate order of the Appellate Assistant Commissioner in the quantum appeal. Therefore, the Tribunal took the view that the appellate order of the Appellate Assistant Commissioner allowing assessee's appeal with regard to application under section 146 was misconceived. It was held by the High Court that in the circumstances of such a case, the doctrine of merger could not impede the granting of justice to the assessee. What merged with the appellate authority's order in the quantum appeal was the Income-tax Officer's order making a best judgment assessment. If the circumstances were such that the assessee was entitled to succeed on his application under section 146 to have the best judgment assessment set aside and have an assessment made in the ordinary course, there was no reason why the application under

section 146 should not have been allowed by the Tribunal, as was allowed by the Appellate Assistant Commissioner. Thus, the Tribunal was held not justified in rejecting the assessee's application under section 146 to reopen the assessment."

Page 2935: section 147:

At the end of the paragraphs titled "*Finality of assessments—reopening when possible*", add,—

"In *CED v Smt. Ila Das* [(1981) 132 ITR 720 (Cal)], an appeal was pending wherein the question of valuation of certain properties was not the subject-matter. It was held that the mere fact that an appeal was pending with regard to other matters could not give jurisdiction to the authorities concerned to reopen the assessment for valuing the properties.

The observations: 'Finality is a good thing but justice is better' of Lord Atkin in *Rash Behari Lal v King Emperor* [AIR 1933 PC 208, 210] has been quoted in *Krishna Devi Dalmia v ITO* [(1981) 128 ITR 210, 213 (Del)].

Effect of reopening an assessment.—Once an assessment is reopened, the original order of assessment ceases to be operative. The effect of reopening an assessment is to vacate or set aside the original order of assessment and to substitute in its place the order made on reassessment [see, *Dy. CCT v H. R. Sri Ramulu*, (1977) Tax LR 1855 (SC); *Saran Engineering Co. Ltd. v CIT*, (1983) 143 ITR 765 (All); *Sharda Trading Co. v CIT*, (1984) 149 ITR 19, 23 (Del); *CST v Durga Metal Works*, (1984) Tax LR (NOC) 16 (All); *CIT v Rangnath Bangur*; *CIT v Purshottam Dass Bangur*, (1984) 149 ITR 487 (Raj)].

On the subject, whether revisional power under section 263 can be exercised by the Commissioner after reopening an assessment or after passing of a reassessment order in pursuance of such reopening, reference may be made to discussion under the heading "*Order under section 147, whether can be revised?*", at pages 4600-4601 of Vol. 5.

In *CIT v Rangnath Bangur*; *CIT v Purshottam Dass Bangur* [(1984) 149 ITR 487 (Raj)], it has been held that a deduction, which was not claimed at the time of the original assessment, can be claimed during the reassessment proceedings."

Page 2936: section 147:

After serial No. (1), giving the illustrative case where there was no escape of income from tax, add,—

"(2) The assessment of the assessee-company was reopened under section 147(a) for including considerable profits made by two concerns which would otherwise have been earned by the assessee-company. Those profits were already taxed in the hands of those two concerns. It was held that because tax had been imposed in the hands of those two concerns on the profits, and the tax which was chargeable from those two entities was either

the same or more and not less, there was no escapement of tax, and, hence, one of the essential ingredients of section 147(a) was not satisfied and that provision was not available for reopening the assessment [*Essex Farms P. Ltd. v CIT*, (1986) 157 ITR 241 (Del)].”.

Page 2936: section 147:

At the end of the paragraph titled “Section 147 takes in both, assessment as well as reassessment”, add,—

“Where no return has been filed prior to the issuance of a notice under section 148, such a notice can be said to have been issued with reference to clause (a) of section 147. In such a case, the provisions of section 147(a) alone are attracted and not those of section 147(b) [*Bhagyawanti Devi v CIT*, (1987) 167 ITR 875 (Raj)].”.

Page 2937: section 147:

At the end of the page, add,—

“No reassessment proceedings against a statutory agent possible after assessment in the hands of the non-resident.—Where an assessment has already been made in the hands of the non-resident himself, ordinarily, there is no scope for initiation of reassessment proceeding under section 147 against the statutory agent of that non-resident [*CIT v Alfred Herbert (India) Pr. Ltd.*, (1986) 159 ITR 583 (Cal)].”.

Page 2942: section 147:

After line 23 from top, add,—

“Pendency of a return in a different status is no bar to the initiation.—The initiation of reassessment proceedings cannot be debarred by the pendency of a return furnished in a different status. Thus, initiation of reassessment proceedings against an association of persons is not barred by the pendency of a return filed in the status of a firm [*Sethi Wine Stores v CIT*, (1985) 154 ITR 832 (MP)]. Similarly, the pendency of a return in the status of a HUF does not bar initiation of proceedings against an individual [see, *CIT v K. L. Venugopal*, (1986) 162 ITR 551 (Karn)].”.

Page 2942: section 147:

At the end of the paragraphs titled “Even the pendency of a loss return deters initiation”, add,—

“Pendency of a return showing income below taxable limit—whether reopening possible?—The pendency of a valid return showing income below taxable limit was a bar, prior to the insertion of section 139(10) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with retrospective effect from 1st April, 1986, to the initiation of reassessment proceedings under section 147 by issuance of a notice under section 148 [*Satishchandra Arya v ITO*, (1984) 146 ITR 334 (MP); *Harish Agarwal v ITO*, (1983) 14 Taxman 462 (MP)].

As a result of the insertion of overriding provisions of section 139(10) by the said Act 46 of 1986, with retrospective effect from 1st April, 1986, initiation of reassessment proceedings under section 147 is possible even during the pendency of a valid return of income [not covered by the proviso to that section] showing the total income below the maximum amount which is not chargeable to tax. Because such a return is deemed, under that section, never to have been furnished. Still, the pendency of a return of income [showing the total income below the maximum amount which is not chargeable to tax] covered by any of the clauses (a) to (f) of the proviso to that section 139(10) bars the initiation of reassessment proceedings.

Pendency of section-263-proceedings does not bar reopening.—Proceedings under section 147 are distinct and separate from proceedings under section 263. Merely because proceedings under section 263 are initiated by issuing a notice in that behalf, the Income-tax Officer is not debarred from initiating proceedings under section 147 [Cf. *Trilok Chandra Seth (HUF) v CWT*, (1987) 167 ITR 564 (All)].

Even an assessment under section 143(1) can be reopened.—The power that can be exercised under section 143(2) to correct the assessment made under section 143(1) does not exclude the Income-tax Officer's power to reopen the assessment under section 147. If the ingredients of section 147 are satisfied, it is open to the Income-tax Officer to exercise that power notwithstanding the fact that there are other remedies open to him under the Act. It cannot, therefore, be accepted that the reassessment under section 147 is vitiated because the Income-tax Officer failed to invoke his power to correct the assessment already completed under section 143(1) by issuing a notice under section 143(2) [*H. S. Imam v CIT*, (1987) 34 Taxman 408, 411 (AP)].

Page 2943: section 147:

In line 5 of the paragraph titled "*A second initiation during the pendency of an earlier initiation—whether valid?*", after "115 ITR 876 (All)", add,—" ; *A. S. S. P. & Co. v CIT*, (1986) 27 Taxman 623 (Mad)".

After line 9 of that paragraph, add,—

"Similarly, where, after making a reassessment order in pursuance of the first notice, the Income-tax Officer has reason to believe that there is any escapement of income, he can issue a fresh notice under section 148 so as to bring such escaped income to charge to tax and in that way he can make any number of reassessment orders [*A. S. S. P. & Co. v CIT*, (1986) 27 Taxman 623 (Mad)].

In the facts of *CIT v Mazda Theatres Pvt. Ltd* [(1986) 162 ITR 442 (Bom)], it was held that the reassessment proceedings were concluded when the settlement petition was finalised. Thereafter, it was not possible for the Income-tax Officer to pass a reassessment order withdrawing the excess

sive depreciation allowed in the original assessment without issuing a fresh notice under section 148.

Also see, *Continental Constructions v IAC*, SLP (Civil) No. 9564 of 1982: (1984) 147 ITR (St.) 5 (SC).".

Pages 2943-2944: section 147:

At the end of the paragraphs titled "*Order recording 'no assessment' in respect of a return, whether amount to disposal of return by an assessment*", add,—

"In *CIT v Trustees of H. E. H. The Nizam's Second Supplemental Family Trust* [(1985) 151 ITR 562 (AP)], the assessee filed a return of income along with an application for refund. The Income-tax Officer made a note in the file to the effect that no refund was allowable. It was held that the return filed by the assessee was a valid return and the Income-tax Officer's note amounted to an order terminating assessment proceedings. Thereafter, the Income-tax Officer was justified in issuing notice under section 148.

In *Manaklal Porwal v CIT* [(1985) 155 ITR 648 (Raj)], the order filing the proceedings was held amounting to an order of assessment.

In *CIT v M. P. Davis* [(1986) 162 ITR 251 (Karn)], the assessment proceedings were held to be terminated when the Income-tax Officer dropped the proceeding by stating 'NP', which stands for 'no proceeding'.".

Page 2944: section 147:

Line 13 from top: The Supreme Court in *CIT v Sandvik Asia Ltd* [(1984) 145 ITR 733 (SC)] has reversed the decision of the Bombay High Court in *CIT v Sandvik Asia Ltd*. [(1980) 122 ITR 988 (Bom)] and has directed to refer, *inter alia*, the question whether the Tribunal was right in holding that the mere noting of the Income-tax Officer on the covering letter filed along with the return stating that the proceedings were already dropped did not amount to an order terminating the reassessment proceedings.

Page 2944: section 147:

Lines 11 and 10 from the bottom: Observation on tax avoidance made in *CIT v A. Raman & Co* [(1968) 67 ITR 11 (SC)] has been **disapproved** in *McDowell & Co. Ltd. v CTO* [(1985) 154 ITR 148 (SC)] which has been relied on in *Workmen v Associated Rubber Industry* [(1986) 157 ITR 77 (SC)].

Page 2946: section 147:

Before the Central heading "*Power to reopen under section 147(a)*", add,—

"**Departmental circular.**—The following departmental circular is relevant to section 147.—

'Effect of higher estimates of income for purposes of advance tax in financial year 1985-86 on assessments in relation to earlier years—Clarification—'

fication regarding.—The Finance Act, 1985, has, with the objective of securing better tax compliance, rationalised the rates of personal income-tax. Fears have, however, been expressed that where a taxpayer declares, for purposes of payment of advance tax during the current financial year, a substantially higher income than that assessed for any earlier year, the Income-tax Officer may suspect that income chargeable to tax for that year has been under-assessed and, accordingly, re-open the assessment for that year. Fears have also been expressed that where the income declared for purposes of payment of advance tax during the current financial year is higher than the income declared in the return of income for an earlier year, the Income-tax Officer may start roving inquiries against the taxpayer in the pending assessment proceedings for that year.

2. The circumstances in which an assessment can be re-opened under clause (a) or clause (b) of [sub-section (1) of] section 147 of the Income-tax Act have been clearly enunciated in a number of decisions of various High Courts and the Supreme Court. Income-tax Officers have, therefore, to follow these principles in re-opening the assessments for past years. In terms of the principles enunciated in these decisions, the mere declaration, for purposes of payment of advance tax, of a much higher income than that assessed for any earlier year, will not constitute a valid ground for re-opening the assessment for any earlier year, or for starting roving inquiries against the taxpayer in any pending assessment proceeding.

3. Clarification has also been sought on the question whether a taxpayer, who is found to have concealed his income for any earlier year can claim that such income should not be assessed in that year on the ground that he had included such income in the estimate of advance tax furnished by him for the financial year 1985-86. Such a claim is clearly untenable. Income which relates to a particular assessment year can be assessed only in that year. Hence, a taxpayer will not be able to claim that any part of the higher income declared by him for purposes of payment of advance tax should be set off against the income found to have been concealed by him for any earlier year. In such cases, the advisable course for the taxpayer will be to, voluntarily and in good faith, make a full and true disclosure of his concealed income, prior to its detection by the Income-tax Officer, and then make an application to the Commissioner of Income-tax for the reduction or waiver of penalty and interest under section 273A of the Income-tax Act' [*Circular No. 423, dated 26-6-1985.*]'".

Pages 2946-2948: section 147(a):

On the subject "*Jurisdiction under section 147(a)—conditions for assumption of*", reference may also be made to *Haji Abdul Gaffar v ITO*, (1985) 154 ITR 1 (MP); *Siesta Steel Construction Pvt. Ltd. v K. K. Shikare*, (1985) 154 ITR 547 (Bom); *R. L. Traders v Union of India*, (1986) 158 ITR 824 (Del), special leave petition dismissed by the Supreme Court: (1986) 156 ITR (St.) 199 (SC); *Indian Oil Corporation v ITO*,

(1986) 159 ITR 956 (SC); *Aditya Mills Ltd. v Union of India*, (1985) 156 ITR 113, 120 (Raj).

Pages 2948-2950: section 147(a):

On the subject "*Reason to believe*", reference may also be made to *Lokendra Singh Rathore v WTO*, (1985) 155 ITR 629 (MP).

Pages 2951-2952: section 147(a):

On the subject "*Reasons must have a live link with the formation of the belief*", reference may also be made to *Raunaq & Co. Pvt. Ltd. v ITO*, (1986) 158 ITR 30 (Del).

Page 2954: section 147(a):

After serial No. (10), giving illustrative cases where formation of belief was held not proper, *add*,—

"(11) The assessee was the chief executive and a very influential person in a company, which paid large sums of money as commission to minor sons of the assessee. Such commission was disallowed in the hands of the company on the ground of extra-commercial considerations. A notice to re-open the assessment of the assessee on the ground that such payments to the minor sons were *benami* income of the assessee. It was held, on facts, that the disallowance of the payment in the company's assessment could not by itself be the basis for forming the requisite belief that the assessee was the real recipient of the amounts [*ITO v Chandilal C. Senka*, (1984) 148 ITR 26 (Cal)].".

Page 2954: section 147(a):

On the subject "*Validity of jurisdiction for initiation has to be considered with reference to the material available at the time of initiation*", reference may also be made to *Chunnilal Surajmal v CIT*, (1986) 160 ITR 141 (Pat) [holding that materials or events becoming available long after initiation cannot sustain the initiation of proceedings].

Pages 2955-2956: section 147(a):

On the subject "*When ITO's affidavit does not set out any material as to formation of requisite belief—effect of*", reference may also be made to *S.P. Divekar & A.P. Divekar v CIT*, (1986) 157 ITR 629 (Bom); *Siesta Steel Construction Pvt. Ltd. v K.K. Shikare*, (1985) 154 ITR 547 (Bom).

Page 2957: section 147(a):

At the end of the paragraph titled "*No reopening possible on the basis of mere suspicion*", *add*,—

"This is so because the 'reason to believe' is not the same thing as 'reason to suspect' [*Indian Oil Corporation v ITO*, (1986) 159 ITR 956, 970 (SC)]. Thus, mere suspicion cannot be made the basis for issuance of a reassessment notice [*CIT v Ram Lal Manohar Lal*, (1986) 158 ITR 9,

11 (Del); *Usha Sales (Pvt.) Ltd. v State of Bihar*, (1985) Tax LR 2852 (Pat)].”.

Page 2957: section 147(a):

At the end of the paragraph titled “*For any assessment year*”, add,—

“Clause (a) of section 147 has used the expressions ‘for that year’ and ‘any year’. These expressions have been used with reference to the failure on the part of the assessee to file the return, or make full and true disclosure of material facts, for a specific year. The specific year or the relevant year is the one in which the disputed income is chargeable to tax in accordance with law but has escaped assessment. These expressions do not mean ‘some year’ [*Addl. CIT v Hasmat Rai Raj Pal*, (1987) 167 ITR 794, 802 (All)].”.

Pages 2957-2958: section 147(a):

On the subject “*What facts are material for the purpose of the assessment*”, reference may also be made to *Indian Oil Corporation v ITO*, (1986) 159 ITR 956 (SC); *A. R. Adaikappa Chettiar v CIT*, (1983) 143 ITR 431 (Mad); *T. M. Kousali v ITO*, (1985) 155 ITR 739 (Karn); *Indo-Aden Salt Mfg. & Trading Co. P. Ltd. v CIT*, (1986) 159 ITR 624, 627 (SC); *Mukhtiar Singh Sandhu v ITO*, (1986) 160 ITR 526 (Punj); *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v IAC*, (1984) 150 ITR 12 (Bom).

Pages 2960-2961: section 147(a):

On the subject “*Duty of the assessee to disclose material facts*”, reference may also be made to—

(1) *Biswanath Pasari v ITO*, (1985) 154 ITR 419 (Cal) [mere disclosure of certain alleged facts will not *ipso facto* absolve the responsibility of the assessee to disclose fully and truly primary and material facts].

(2) *Aditya Mills Ltd. v Union of India*, (1985) 156 ITR 113 (Raj).

(3) *Indo-Aden Salt Mfg. & Trading Co. P. Ltd. v CIT*, (1986) 159 ITR 624 (SC) [obligation of the assessee is to disclose only primary facts and not inferential facts].

(4) *Indian Oil Corporation v ITO*, (1986) 159 ITR 956 (SC).

Pages 2962-2963: section 147(a):

On the subject “*Assessee under no obligation to suggest possible inferences*”, reference may also be made to *Indian Oil Corporation v ITO*, (1986) 159 ITR 956 (SC).

Page 2964: section 147(a):

At the end of the paragraph titled “*No omission if the facts are known*”, add,—

“But the making of an assessment knowing the fact that the assessee had failed to produce the relevant books of account does not operate as

a bar to initiation of reassessment proceedings if the requisite conditions in that regard are satisfied [*Trustees and Executors of the Late Shri Shamji Kheta v ITO*, (1984) 148 ITR 219 (Bom)].”.

Pages 2965-2966: section 147(a):

At the end of the paragraphs titled “*Deficiency in making enquiries does not justify action*”, add,—

“Even if there was any oversight or mistake or inadvertence in making the original assessment, it does not empower the Income-tax Officer to re-open the assessment under section 147(a) [*Addl. CIT v Ganeshilal Lal Chand*, (1985) 154 ITR 274, 276 (Raj)]. Also see, *CWT v Shivram Singh*, (1987) 163 ITR 773 (Pat).

Similarly, if the assessee has disclosed primary facts relating to transactions, it was for the Income-tax Officer to make the necessary enquiries and draw proper inferences as to whether the income returned is correct or not. It would be the plain duty of the Income-tax Officer to make an enquiry and if he did not make an enquiry, it is a case of oversight and it could not be said that income chargeable to tax had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. Reassessment under the provisions of section 147(a) of the Income-tax Act, 1961, would not be valid in such a case [*CIT v Kalappa*, (1987) 167 ITR 22 (Karn)].”.

Pages 2967-2968: section 147(a):

At the end of the paragraph titled “*Scope of Explanation 2 to section 147*”, add,—

“The fact that the Income-tax Officer could have found out the correct position by further probing the matter does not exonerate the assessee from the duty to make a full and true disclosure of the material facts. *Explanation 2* to section 147 makes the position abundantly clear [*Indo-Aden Salt Mfg. & Trading Co. P. Ltd. v CIT*, (1986) 159 ITR 624, 628 (SC)].”.

Page 2968: section 147(a):

At the end of the paragraphs titled “*Omission or non-disclosure must be deliberate*”, add,—

“Omission or failure to disclose fully or truly a material fact postulates the knowledge of the said fact at the relevant time and a person cannot be held guilty of omission or failure to disclose a fact of which he had no knowledge [*Sampat Ram Budhmal Dugar v CWT*, (1987) 164 ITR 178, 191 (Raj)].

At the same time, in respect of the failure to disclose, the omission to disclose may be deliberate or inadvertent. That is immaterial. But if there is omission to disclose material facts, then, subject to the other conditions, jurisdiction to reopen is attracted [*Indo-Aden Salt Mfg. & Trading Co. P. Ltd. v CIT*, (1986) 159 ITR 624, 628 (SC)].”.

Pages 2969-2970: section 147(a):

On the subject "*Mere change of opinion not enough*", reference may also be made to *Siesta Steel Construction Pvt. Ltd. v K.K. Shikare*, (1985) 154 ITR 547 (Bom); *Sunrolling Mills P. Ltd. v ITO*, (1986) 160 ITR 412 (Cal).

Page 2972: section 147(a):

After serial No. (10), giving illustrative cases where, on facts, it was held that there was a mere change of opinion in initiating proceedings under section 147(a), *add,—*

"(11) Issuance of a reassessment notice on the ground that the application of a different method of computation would result in higher income has been held on the basis of mere change of opinion [*T. A. George v Ag. ITO*, (1985) 153 ITR 721 (Ker)].

(12) Relief under section 80J was granted in the original assessment on the basis of all particulars furnished and various statements filed by the assessee. Assessment reopened on the ground that relief under section 80J was wrongly allowed. It was, on facts, held that the issue of notice was on mere change of opinion [*Siesta Steel Construction Pvt. Ltd. v K. K. Shikare*, (1985) 154 ITR 547 (Bom)].

(13) Reopening the assessment on the ground that the drriage of ground-nuts accepted in the original assessment was excessive, was held to be on mere change of opinion [*Vijayalakshmi Oil Industries v ITO*, (1985) 155 ITR 748 (Karn)].

(14) Original assessment was completed without including one-fifth share to which the assessee would have been entitled in the deceased's estate which was under administration after accepting the claim made in that behalf. Issuance of reassessment notice for including such share was held on the basis of a mere change of opinion [*Miheer Hemant Mafatlal v ITO*, (1986) 159 ITR 515 (Bom)].

(15) The share income from a firm was assessed as income belonging to the HUF of the *karta* who was a partner representing the family. Share income of minors of the *karta* admitted to the benefits of the partnership were assessed separately in the hands of minors. Reopening of assessment of the *karta*, in his individual capacity, for including share income of the minors was held on the basis of mere change of opinion [*CIT v N. Ramakrishnan*, (1986) 160 ITR 625 (Mad)].

Also see, *Hajee Mohamed Ibrahim v GTO*, (1983) 143 ITR 333 (Karn); *Palco Lining Co. v STO*, (1984) Tax LR 2852 (All).".

Page 2975: section 147(a):

After serial No. 8, giving the illustrative cases where the decision of the Supreme Court in *Lakhmani Mewal Das's* case [(1976) 103 ITR 437 (SC)] has been followed/applied in the context of reassessment notices in connection with once already scrutinised cash credits, etc., *add,—*

"9. *CIT v Bhagwan Ltd* [(1983) 144 ITR 699 (Cal)]: Original

assessment was completed without making any addition on account of *hundi* loans. Reassessment proceedings were started on the ground that loans were bogus. Held, that at the time of reopening the assessment, there was no materials on record for formation of the requisite belief. Also see, *CIT v Dwarka Prosad Bazaz*, (1987) 32 Taxman 249 (Cal).

10. *Shiv Lal Kanhaiya Lal v CIT* [(1986) 162 ITR 548 (Punj)]: Original assessment was completed after considering and accepting the confirmatory letters from loan creditors. Reopening of the assessment on the ground that the creditors indulged in *havala* business was held not justified as there was no non-disclosure.

Also see, *Addl. CIT v Ganeshilal Lal Chand*, (1985) 154 ITR 274 (Raj); *Raunaq & Co. Pvt. Ltd. v ITO*, (1986) 158 ITR 30 (Del).".

Page 2976: section 147(a):

After line 4 from top, *add*,—

"The *Madnani's* case [(1979) 118 ITR 1 (SC)] has also been applied in *Basanta Ram Kedarnath v ITO* [(1987) 165 ITR 777 (Cal)], where it has been held that the assessee having produced in the course of original assessment proceedings the details of the *hundi* loans as also the entries in the books of account supporting the same, it was for the Income-tax Officer in those proceedings to determine whether the loans were genuine or not. Initiation of reassessment proceedings was not justified."

Page 2977: section 147(a):

In line 13 from bottom, after "Taxation 57(1)-14 (Punj)", *add*,— —
 " ; *CIT v Bihar Cotton Mills Ltd.*, (1986) 160 ITR 275 (Pat); *Addl. CIT v Hasmat Rai Raj Pal*, (1987) 167 ITR 794 (All)" [holding that if the disclosure was knowingly false, the Income-tax Officer can well invoke his powers under section 147(a)].

Pages 2977-2978: section 147(a):

On the subject "*Onus*" in case the provisions of section 147(a) are invoked, reference may also be made to—

(1) *CIT v Pyarchand Keshrimal Porwal (HUF)*, (1987) 167 ITR 272 (Bom) [the revenue must establish, for the purposes of a valid reopening under section 147(a) of an assessment, that the assessee had failed to fully and truly disclose all material facts relevant to the assessment]. Also see, *Basanta Ram Kedarnath v ITO*, (1987) 165 ITR 777 (Cal).

Pages 2978-2979: section 147(a):

Lines 19-20 of the paragraphs titled "*Income of wife or minor child includible in the income under section 64—non-disclosure, whether of a material fact?*": The decision in *Radheshyam Ladia v ITO* [(1971) 82

ITR 247 (Cal)] has, in effect, been affirmed by the Supreme Court in *ITO v Radheshyam Ladia* [(1987) 166 ITR 134 (SC)].

In *CIT v Lt. General Umrao Singh* [(1983) 142 ITR 253 (Raj)], it has been held that in view of the finding of the Tribunal that the house property belonged to the wife, the assessee-husband was under no obligation to disclose income from such property in his return.

In the absence of a provision similar to section 64, it cannot be said that reassessment proceedings can be initiated for including income of the minors from certain properties on the ground that such properties were transferred to the minors by the assessee-individual [*P. T. Chermana v Ag. ITO*, (1984) 147 ITR 688 (Karn)],

Page 2980: section 147(a):

On the subject "*Fishing or roving enquiry not permissible*", reference may also be made to *Siesta Steel Construction Pvt. Ltd. v K. K. Shikare*, (1985) 154 ITR 547 (Bom); *Chunnilal Surajmal v CIT*, (1986) 160 ITR 141 (Pat).

Pages 2981-2982: section 147(a):

On the subject "*No reassessment proceedings u/s. 147(a) possible on the basis of a subsequent valuation report*", reference may also be made to *Haji Abdul Gaffar v ITO*, (1985) 154 ITR 1 (MP); *CWT v Smt. Gulnar Marfatia*, (1986) 159 ITR 311 (Raj); *Smt. Tarawati Debi Agarwal v ITO*, (1986) 162 ITR 606 (Cal); *CWT v Raghunandan Saran Ashok Saran*, (1987) 60 CTR (Del) 175.

Page 2992: section 147(a):

After serial No. (43), giving the illustrative cases where there was no omission to disclose material facts so as to attract section 147(a), add,—

"(44) In case of an assessee not obliged to file voluntary return, there arises no question of invoking section 147(a) [*Modi Charitable Fund Society v ITO*, (1983) 142 ITR 818 (All)].

(45) Method of valuation adopted by the assessee was disclosed to the income-tax authorities and the same was accepted by them. Reassessment proceedings on the ground that such method was erroneous were held not valid [*Aryodaya Spng. & Wvg. Co. Ltd. v ITO*, (1983) 144 ITR 817 (Guj); *Sarangpur Cotton Mfg. Co. Ltd. v ITO*, (1983) 144 ITR 835 (Guj); *Commercial Ahmedabad Mills Co. Ltd. v ITO*, (1983) 144 ITR 839 (Guj)].

(46) Assessee's claim for relief under section 80-I and also for higher development rebate made on the basis of several judicial decisions was accepted in the course of original assessment proceedings. Reassessment notice on the ground that such claim was erroneously accepted was held not valid as there was no failure to disclose fully and truly all material facts [*Chemicals & Fibres India Ltd. v M. K. N. Pillai*, (1984) 146 ITR 280 (Bom)].

(47) Development rebate was granted on the basis of information given by the assessee about the installation of the factory as well as the manufacture of pipes which had remained in stock. Reassessment notice in order to withdraw development rebate so granted was held not justified [*V. Ramakrishna & Sons Ltd. v CIT*, (1984) 149 ITR 554 (Mad)].

(48) Original assessment was reopened on the ground that the assessee did not disclose that the yarn purchased by it was imported polyester filament yarn or grey or dyed or twisted or sized. It was held that these were not primary facts relevant to the assessment. Therefore, their non-disclosure could not make the disclosure of material facts anything less than full and true disclosure [*Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v IAC*, (1984) 150 ITR 12 (Bom)].

(49) The facts about the borrowing of the funds by the assessee from a closely-held company as also the availability of accumulated profits in the hands of that company were made known to the Income-tax Officer at the time of original assessment. Amount of borrowing was not treated as deemed dividend in the original assessment. Reassessment proceedings for treating such borrowing as deemed dividend were held not justified [*CIT v P. S. S. Somasundaram Chettiar*, (1985) 151 ITR 737 (Mad)].

(50) Details regarding the transaction in question having already disclosed at the time of the original assessment, the reassessment proceeding to apply section 52(2) were held not justified [*Century Spng. & Mfg. Co. Ltd. v ITO*, (1985) 153 ITR 209 (Bom)].

(51) The facts about period of construction and cost of construction were disclosed to the Income-tax Officer. The Income-tax Officer made estimated addition on that account in the assessment for a subsequent assessment year. The Tribunal deleted addition for that year. Reopening of assessment of earlier assessment year for bringing such estimated income to charge to tax in that year was held not justified as there was no non-disclosure on the part of the assessee [*Tolaram Gangaram v ITO*, (1985) 155 ITR 55 (Guj)].

(52) In spite of the fact that the information about search of the assessee's premises and seizure of gold bars and currency was available with the Income-tax Officer at the time of the original assessment, the Income-tax Officer completed the assessment without making any enquiries in that regard and without making any addition on that count. Reopening of the assessment for making addition on that count was held not justified as the primary fact about seizure was known to the Income-tax Officer [*CIT v Mangilal Dhanraj*, (1985) 155 ITR 71 (Bom)].

(53) Original assessment, during the course whereof details regarding additions and alterations made to the buildings owned by the assessee and expenses incurred by the assessee on that account were furnished, was completed after accepting the additional cost of construction shown by the assessee. Reopening of the assessment for making addition in that regard was held not justified as there was no failure on the part of the assessee to

disclose fully and truly the material facts [*Dinkarra Anantrai Mankad v ITO*, (1985) 155 ITR 406 (Guj)].

(54) Failure to disclose the fact that the assessee's claim for higher compensation under the Land Acquisition Act, 1894, in the civil court was pending when the return was filed and the original assessment was completed, has been held not amounting to failure to disclose material facts necessary for the assessment so as to justify action under section 147(a) [*T. M. Kousali v ITO*, (1985) 155 ITR 739 (Karn)].

(55) The assessee cannot be found guilty of non-disclosure of a fact which is disclosed in the balance sheet filed along with the return on the basis of which the original assessment was completed [*CIT v Corporation Bank Ltd.*, (1986) 157 ITR 409 (Karn)].

(56) Where there is no evidence to show that the primary facts about loan creditors disclosed by the assessee in the course of the original assessment proceedings were untrue, the reassessment proceedings could not be held to be valid [*CIT v Ram Lal Manohar Lal*, (1986) 158 ITR 9 (Del)].

(57) Where the method of accounting adopted by the assessee was disclosed to the Income-tax Officer and the same was accepted in the original assessment, subsequent reassessment notice objecting to such method of accounting is not valid [*Coca-Cola Export Corporation v ITO*, (1986) 158 ITR 439 (Del), special leave petition granted by the Supreme Court: (1985) 152 ITR (St.) 226 (SC)].

(58) 40% of the common administration expenses incurred by a London company on behalf of the assessee and other companies was allowed in the original assessment of the assessee-company. Auditor's certificate for a subsequent year that allowability of 10% of such expenses being reasonable was held not a valid ground for reopening the assessment for earlier assessment year on the basis of failure of disclosure by the assessee [*Indian Oil Corporation v ITO*, (1986) 159 ITR 956 (SC)].

(59) In respect of interest accruing to the assessee on a date after the completion of the original assessment, the assessee could not be held guilty of non-disclosure [*Mukhtiar Singh Sandhu v ITO*, (1986) 160 ITR 526 (Punj)].

(60) Initiation of reassessment proceedings on the ground that the income of two firms belonged to the assessee-HUF was held not justified as there was no evidence of failure to disclose material facts necessary for assessment [*Prahlad Maliram v CIT*, (1987) 166 ITR 149 (Raj)].

Also see, *CIT v Pandey Narsingh Sahay*, (1984) 38 CTR (Pat) 126.

In the facts of the following cases, the action under section 147(a) or similar provision was held not justified:—

(1) *Smt. Prabha Rajya Lakshmi v WTO*, (1983) 144 ITR 180 (MP) [where the reopening was done on the ground that the proper or correct valuation of a particular asset was not shown in the original return]. Also see, *Lokendra Singh Rathore v WTO*, (1985) 153 ITR 466 (MP); *Nulsi Neville Wadia v WTO*, (1985) 154 ITR 447 (MP).

(2) *Saroj Devi v WTO*, (1984) 148 ITR 452 (Raj) [where higher valuation of a particular asset was shown in a subsequent year, as the same does not lead to a presumption that the valuation given in the earlier year was untrue].

(3) *B. V. Venkatesam Chetty v CIT*, (1985) 154 ITR 217 (AP) [where the dividend was declared during the financial year but received by the assessee, following cash system, after the end of the financial year].

(4) *Sharad L. Patel v ITO*, (1986) 159 ITR 791 (Bom) [where the interest on the amount advanced by the minor son to his father, who was an assessee, was already assessed in the hands of the minor son and the father-assessee did not disclose interest on investment of such loan in a private company].

(5) *CIT v Shri Ram Kishan*, (1985) 44 CTR (Del) 374 [where the original assessment was completed on the basis of a particular market value—reassessment proceedings for upsetting such price held not justified].

Pages 2995-2996: section 147(a):

At the end of serial No. (20), giving the illustrative cases where non-disclosure of material facts was found to exist so as to justify action under section 147(a), *add*,—

“(21) Original assessment made even though the assessee did not produce books of account. Initiation of reassessment proceedings was held not barred by such assessment as the assessee failed to make the full and true disclosure [*Trustees and Executors to the Late Shri Shamji Kheta v ITO*, (1984) 148 ITR 219 (Bom)].

(22) The assessee's statement about cost of improvements of the buildings made in the course of original assessment proceedings was found to be not true and, therefore, reopening of the assessment was held justified [*A. Shanmugham Chetty v CIT*, (1985) 154 ITR 331 (Mad)].

(23) Reopening of the assessment on the basis of the subsequent discovery and objective belief of the Income-tax Officer that in the original assessment income had escaped assessment for non-disclosure of genuine facts was held justified [*Biswanath Pasari v ITO*, (1985) 154 ITR 519 (Cal)].

(24) In the original assessment, deduction for commission alleged to be paid was allowed even though name of the agent and the details of services rendered by him were not furnished. Subsequently, it was discovered that the alleged agent had not rendered any services. Reassessment proceedings were held justified [*Aditya Mills Ltd. v Union of India*, (1985) 156 ITR 113 (Raj)].

(25) Reopening of assessment was held justified as there was failure to disclose material facts necessary for the assessment and duplicate set of books was discovered [*Manilal Raghavji Kothari v CIT*, (1985) 156 ITR 661 (Pat)].

(26) Assessee did not disclose certain income which was found belonging to him. Initiation of reassessment proceedings under section 147(a) was held justified [*Sohan Singh v CIT*, (1986) 158 ITR 174 (Del)].

(27) Reassessment proceedings initiated as the ceiling fixed by the Government for remittances to be made by the assessee was not disclosed at the time of original assessment. Action was upheld [*Coca-Cola Export Corporation v ITO*, (1986) 158 ITR 439 (Del)].

(28) In the original assessment, depreciation was allowed on the basis that salt works consisted only of masonry work. There was no disclosure by the assessee as to what portion of salt works was earth work and what portion masonry work. No depreciation was allowable on the portion of earth work. Depreciation was allowable only on masonry work. It was held, on facts, that there was non-disclosure of material fact by the assessee so as to justify action under section 147(a) for reopening the assessment [*Indo-Aden Salt Mfg. & Trading Co. P. Ltd. v CIT*, (1986) 159 ITR 624 (SC)].

(29) The original assessment was completed after accepting the assessee's claim for exemption in respect of house property income under section 23(3)(a). Later, it was found that the condition for availing that exemption was not fulfilled. It was held, on facts, that the reopening of assessment for withdrawing the exemption was justified [*Shikharchand Jain v CIT*, (1986) 160 ITR 564 (MP)].

(30) The assessee took a loan from a company and claimed deduction in respect of interest paid thereon. It was not disclosed to the Income-tax Officer whether the company was a closely-held one or not and whether that company had any accumulated profits or not. Reassessment proceedings for treating such loan as falling within the net of deemed dividend as defined in section 2(6A)(e) of the 1922 Act were held justified [*CIT v A.I. Rahimtulla*, (1986) 160 ITR 784 (Bom)].

(31) Initiation of reassessment proceedings under section 147(a) on discovery of suppressed books of account was upheld [*Bishamber Nath Ram Sarup v CIT*, (1987) 163 ITR 87 (Del)].

(32) Cost of construction estimated in the original assessment on the basis of construction of ground and first floors. Reopening on discovery of the fact of construction of second floor was upheld [*CIT v P. R. L. S. Abubacker*, (1987) 163 ITR 348 (Mad)].

(33) The assessee did not disclose the fact of sale of certain shares in the course of the original assessment proceedings. Reopening of assessment on coming to know the fact of sale of shares for bringing to tax capital gains arising therefrom was held justified [*Mrs. Leela Nath v CIT*, (1987) 164 ITR 216 (Cal)].

(34) Original assessment was completed taxing the assessee-company as a widely-held company as claimed by the assessee. Reassessment proceedings were started on the basis of certain documents seized in the course of a search conducted at the assessee's premises indicating to the inference that the assessee was not a widely-held company. The action was upheld [*Orien-*

tal Carpet Manufacturers (India) Ltd. v ITO, (1987) 31 Taxman 80 (Punj)].

Also see, *R.B. Seth Ram Rattan v CIT*, (1985) 156 ITR 612 (Del); *Mysore Bangle Works v CIT*, (1986) 157 ITR 411 (Karn).

On the question of validity or otherwise of the initiation of proceedings under section 147, reference may also be made to—

(1) *Ganga Prasad Budhia v CIT*, (1983) 143 ITR 75 (All) [for adopting a different *bona fide* annual value than that adopted in the original assessment].

Page 3000: section 147(a):

After line 21 from top, *add*,—

“Which High Court is competent to entertain a writ?—The High Court within whose jurisdiction a part of the cause of action arose is competent to entertain the writ and grant relief to the assessee [*Modi Charitable Fund Society v ITO*, (1983) 142 ITR 818 (All)].”.

Page 3000: section 147(a):

At the end of the paragraph titled “*Existence of even one of the reasons taken is sufficient to sustain valid initiation*”, *add*,—

“If a notice is issued on more than one ground, and one of the grounds is sufficient to uphold the validity of the notice, then even if the other grounds are not sustainable, it will not make the notice bad [*Jameson & Magrudar Co. Pr. Ltd. v ITO*, (1987) 167 ITR 77, 82 (Cal)].”.

Pages 3001-3002: section 147(a):

At the end of the paragraphs titled “*High Court, when may issue a writ*”, *add*,—

“In *Raunaq & Co. Pvt. Ltd. v ITO* [(1986) 158 ITR 30 (Del)], it has been held that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, has power to quash a notice under section 148 if the conditions precedent for issuance of such notice do not exist. Also see, *Abdul Qadar Adam v WTO*, (1987) 62 CTR (Karn) 1.

Where there exist disputed facts, the High Court, in exercise of his writ jurisdiction, would, ordinarily, not decide the question whether the formation of the belief has nexus with the material on record [*R. L. Traders v Union of India*, (1986) 158 ITR 824 (Del), special leave petition dismissed by the Supreme Court: (1985) 156 ITR (St.) 159 (SC)].”.

Pages 3002-3004: section 147(a):

On the subject “*Alternative remedy no bar to the issue of a writ*”, reference may also be made to *Bhim Singh v ITO*, (1983) 143 ITR 620 (Punj); *Mukhtiar Singh Sandhu v ITO*, (1986) 160 ITR 526, 529 (Punj).

Page 3004: section 147(a):

On the subject “*Alternative remedy, if a bar to writ proceedings*”, refer-

ence may also be made to *Coca-Cola Export Corporation v ITO*, (1986) 158 ITR 439 (Del).

Pages 3004-3005: section 147(a):

On the subject "*Delay in making application*", reference may also be made to *Coca-Cola Export Corporation v ITO*, (1986) 158 ITR 439 (Del); *T. A. George v Ag. ITO*, (1985) 153 ITR 721 (Ker).

Page 3005: section 147(a):

At the end of the paragraph titled "*Which officer is required to depose before the Court*", add,—

"In the facts of *Ratanlal Mohta & Sons v ITO* [(1984) 148 ITR 246 (Cal)], the affidavit filed by the successor Income-tax Officer, as the original Income-tax Officer already retired, was taken into consideration because the statements in the affidavit corresponded with the reasons as disclosed from the records."

Page 3006: section 147(a):

The five lines of the paragraph titled "*147(a) proceedings possible even if 132((5)-order is found to be invalid*", may be deleted.

Pages 3008-3011: section 147(a):

On the subject "*Reassessment not confined to only those items in respect of which there is initiation of proceedings*", reference may also be made to—

(1) *CIT v B. Nagi Reddi*, (1983) 144 ITR 62 (Mad) [In a reassessment in pursuance of reopening under section 147(a) within four years, items falling under section 147(b) can also be included even though the period for reopening under section 147(b) had already expired].

(2) *CIT v Nemidas Vishaniji & Co.*, (1984) 145 ITR 423 (AP) [In a reassessment in pursuance of a reopening under section 147(a) even beyond four years, items falling under section 147(b) can be included].

Page 3010: section 147(a):

At the end of line 4 from top, add,— "*Also see, CIT v Nirlon Synthetics and Fibres Ltd.*, SLP (Civil) Nos. 147-149 of 1981: (1984) 147 ITR (St.) 2 (SC)."

Page 3011: section 147(a):

After line 26 from top, add,—

"But where the disallowance has a nexus with the items of income brought to charge to tax in reassessment, the disallowance may be questioned in the course of reassessment proceedings [*Chettinad Corporation Pr. Ltd. v CIT*, (1984) 147 ITR 57 (Mad)].

In *CIT v Rangnath Bangur*; *CIT v Purshottam Dass Bangur* [(1984) 149 ITR 487 (Raj)], it has been held that a deduction not at all claimed in

the original assessment can be claimed in the course of reassessment proceedings.

This is so because the assessee has got a right to raise all the legitimate contentions in the reassessment proceedings, which he could have raised in the original assessment proceedings [*M. R. Thammaiah v Ag. ITO*, (1984) 150 ITR 403, 407-8 (Karn)].

But, according to the Madhya Pradesh High Court, in *Dr. Ravishanker Tapa v CIT* [(1987) 165 ITR 21 (MP)], a matter not agitated in the original assessment proceedings cannot be agitated in reassessment proceedings. In that case, the Tribunal was held justified in holding that it was not open to the assessee to agitate in reassessment proceedings under section 147(a) that his share income from the firm was the income of the joint family and was wrongly included in his individual income in the original assessment.

In *State Bank of Hyderabad v CIT* [(1987) 34 Taxman 515, 521 (AP)], the principles have been summarised as under:—

- (i) Once an assessment is reopened under section 147, the entire assessment proceedings are at large. It is open to the tax authorities to reconsider in such reassessment all items of escape-ment of income without limitation; at the same time it is open to the assessee to put forward claim for deduction of any expenditure which was inadvertently omitted in the original assessment proceedings. Likewise, the assessee can also put forward claim for non-taxability of items of receipt which was not put forward in the original assessment.
- (ii) In any event, the income for purposes of reassessment cannot be reduced beyond the income originally assessed, as basically the assessment is reopened on account of escapement of income and by allowing an assessee to claim deductions it is not permissible under law to reduce the income originally assessed. Even if the assessee's fresh claims, during the course of reassessment enquiry, are accepted, still the allowance of the claims should be limited to the extent to which they reduce the income to that originally assessed under section 143(3).
- (iii) If a claim for deduction or a claim for non-taxability of a receipt was put forward in the original assessment proceedings and was considered and rejected by the tax authorities and that finding had become final, it is not open to an assessee to put forward those claims once again during the course of reassessment proceedings."

Page 3011: section 147(a):

After line 13 of the paragraph titled "*Post-initiation Supreme Court judgment not to affect the validity of the initiation—reassessment possible for other escaped items*", add,—

"But where the reassessment notice was issued on the basis of the adjudication order of the Gold Control authorities to the effect that the gold seized belonged to the assessee, such a notice was not sustained after such adjudication order was set aside in revision and the same was quashed [*Perla Krishna Rao v ITO*, (1986) 159 ITR 299 (AP)].".

Page 3012: section 147(a):

At the end of paragraph titled "*Best judgment reassessment also possible*", add,—

"In *CIT v K. L. Venugopal* [(1986) 162 ITR 551 (Karn)], notice under section 148 was issued asking the assessee to furnish a return in the status of individual. No return was furnished in response to such a notice. No doubt, earlier a return in the status of a HUF was filed by the assessee who had all along been assessed as an individual. The Income-tax Officer completed a best judgment assessment under section 147(a) read with section 144 for non-compliance of notice under section 148. The action of the Income-tax Officer was upheld. The furnishing of the return in the status of HUF was not a bar in that regard."

Pages 3012-3013: section 147(a):

At the end of the paragraph titled "*Duty of the appellate authority on challenge to proceedings*", add,—

"Where the initiation of reassessment proceedings is challenged before the appellate authorities, it is their bounden duty to decide that question on the basis of the material on record [*P. K. Divakar v CIT*, (1985) 151 ITR 11 (Bom)]. Also see, *Deep Chand Kothari v CIT*, (1987) Taxation 87(3)-123 (Raj).".

Page 3018: section 147(a):

At the end of the paragraphs titled "*Mere a prior assessment in another hand does not preclude the initiation against a right person*", add,—

"An assessment or reassessment in the hands of a person to whom in truth and reality a particular income belongs can be made by resorting to proceedings under section 147 on fulfilment of conditions thereabout even though in respect of such income a protective assessment has already been made in the hands of a different person [see, *Sohan Singh v CIT*, (1986) 158 ITR 174 (Del)].".

Pages 3018-3019: section 147(b):

On the subject "*Conditions essential for action under section 147(b)*", reference may also be made to *CIT v Dhar Central Co-operative Bank*, (1984) 149 ITR 438 (MP); *Yeshwant Talkies v CIT*, (1986) 157 ITR 103 (MP); *A. V. Malliah Chettiar & Sons v CIT*, (1985) 153 ITR 659 (Mad).

Page 3029: section 147(b):

After line 2 from top, *add*,—

“Information may also consist of—

- (1) any subsequent decision of the Supreme Court [*Sirsa Industries v CIT*, (1984) 147 ITR 238 (Punj)].

But, a decision of the Supreme Court which was available on the date of the original assessment cannot constitute ‘information’ for initiation of reassessment proceedings as the ignorance of law is not a valid ground [*Century Enka Ltd. v CIT*] [(1983) 143 ITR 629 (Cal)]. Also see, *CIT v Sitadevi N. Poddar*, (1984) 148 ITR 506 (Bom)]; or

- (2) a communication from the Direction of Inspection giving details of investigation and findings about the manipulation in the price quotation of shares of certain company [*Purushottam Das Bangur v WTO*, (1984) 148 ITR 651 (Cal)]; or
- (3) a decision of an appellate authority [*CIT v Makhan Singh*, (1985) 154 ITR 121 (Raj)]; *Makanlal Porwal v CIT*, (1985) 155 ITR 648 (Raj); *Mysore Cements Ltd. v ITO*, (1987) 167 ITR 370 (Karn); *Speciality Fats Pr. Ltd. v ITO*, (1984) 43 CTR (Bom) 340]; or
- (4) the information in the form of a revised return [*Niranjan & Co. Pr. Ltd. v CIT*, (1986) 159 ITR 153 (SC), affirming, *Niranjan & Co. Pr. Ltd. v CIT*, (1972) 84 ITR 427 (Cal), which has been referred to at pages 3028 and 3041 of Vol. 3].

Pages 3029-3031: section 147(b):

On the subject “*Audit objection—when constitutes ‘information’*”, reference may also be made to—

- (1) *CWT v Smt. Savitri Devi*, (1983) 144 ITR 345 (Punj); *Ramesh Chandrasen Ashar v CED*, (1984) 148 ITR 1 (Bom); *CIT v Aggarwal Textile Mills*, (1985) 154 ITR 234 (Punj); *CIT v Hackbridge-Hewittic & Easun Ltd.*, (1985) 154 ITR 378 (Mad); *Rajan Silk v ITO*, (1985) 154 ITR 474 (Guj); *Dr. H. Habicht v Makhija*, (1985) 154 ITR 552 (Bom); *Dinkarra Anantrai Mankad v ITO*, (1985) 155 ITR 406 (Guj); *Bhagwan-das Jain v CIT*, (1985) 156 ITR 608 (MP); *Punjab Produce & Trading Co. Ltd. v CIT*, (1986) 158 ITR 524 (Cal); *P.K. Mohammed Pr. Ltd. v CIT*, (1986) 162 ITR 587 (Ker); *CWT v Kaviraj Mahipal Singh*, (1987) 165 ITR 705 (Raj); *H.H. Moharaja Shri Lokendra Singji v CIT*, (1987) 166 ITR 407 (MP); *Bombay Cricket Association v WTO*, (1987) 166 ITR 356 (Bom) [holding that a note of the audit party on a point of law cannot be regarded as ‘information’].
- (2) *M. A. Murugappan v CWT*, (1985) 153 ITR 626 (Mad); *CIT v Abhoji Rao Phalke*, (1985) 156 ITR 604 (MP); *Zoraster & Co. v CIT*, (1987) 163 ITR 858 (Raj) [holding that an

audit objection bringing to the notice of the Income-tax Officer a factual position or correct position of law without declaring the same may constitute 'information'].

Also see, *Travancore Electro-Chemical Industries Ltd. v CIT*, SLP (Civil) No. 11200 of 1985: (1986) 159 ITR (St.) 107-108 (SC); *Saroj Devi v WTO*, (1984) 148 ITR 452 (Raj); *Export Enterprises Pr. Ltd. v ITO*, (1983) 142 ITR 641 (Cal).

Page 3031: section 147(b):

On the subject "*Opinion of CBDT on a point of law—whether constitutes information?*", reference may also be made to *Union of India v Arvind N. Majatlal, Trustees of Seth Hemant Bhagubhai Trust* [(1986) 160 ITR 420 (Bom), special leave petition dismissed by the Supreme Court: (1987) 165 ITR (St.) 339 (SC)] holding that an opinion expressed by the Board in a circular does not constitute an information as the same is not given in an appeal or other like proceedings.

But, where the object of a circular issued by the Board was merely to convey information regarding pronouncement of a judgement by the Supreme Court, the Income-tax Officer was held entitled to act on such information communicated through the circular. The mere fact that such circular contains, apart from the information, the opinion of the writer would not by itself make the information invalid or unacceptable, provided it is separable from the opinion [*CIT v West Coast Industrial Co. Ltd.*, (1987) 168 ITR 72 (Ker)].

Page 3032: section 147(b):

After serial No. (5), giving illustrative cases about "*No information cases*", add,—

- “(6) A message from the Director of Inspection asking the Income-tax Officer to review assessee's case on the basis of Supreme Court's decisions which were available at the time of original assessment [*Century Enka Ltd. v ITO*, (1983) 143 ITR 629 (Cal)].
- (7) A note of the Inspecting Assistant Commissioner indicating that the interest allowed was excessive [*G.K. Devarajulu Naidu v CIT*, (1983) 144 ITR 686 (Mad)].
- (8) A circular of which the Income-tax Officer was not aware of at the time of the original assessment [*Dr. H. Habicht v Makhija*, (1985) 154 ITR 552 (Bom)].
- (9) A directive from the Commissioner [*CIT v Vyjayanthimala Bali*, (1985) 155 ITR 662 (Bom); *Yeshwant Talkies v CIT*, (1986) 157 ITR 103 (MP)].”.

Page 3032: section 147(b):

After line 7 of the paragraph titled "*Information-supplying decision ultimately reversed, not to affect the initiation*", add,—

"But, the reassessment in pursuance of such initiation must not be inconsistent with the decision of the higher court [*CIT v Mohan Lal Kansal*, (1985) 21 Taxman 76 (Punj)].".

Pages 3032-3033: section 147(b):

On the subject "*Valuation report, whether constitutes 'information'?*", reference may also be made to—

- (1) *K. G. Kemptur v WTO*, (1984) 146 ITR 611 (Karn) [A valuation report by the Valuation Officer has been held to constitute 'information']. Also see, *Amrut Talkies v ITO*, (1984) 150 ITR 386 (Karn).
- (2) *L. B. Kharewala v ITO*, (1984) 147 ITR 67 (Guj) [where the 'capital loss' on sale of a property was accepted by the Income-tax Officer in the original assessment, reopening under section 147(b) on the basis of a valuation report putting the market value of that property at a higher figure for invoking section 52(2) was held not justified]. Also see, *CWT v Raghu-nandan Saran Ashok Saran*, (1987) 60 CTR (Del) 175.

Page 3034: section 147(b):

On the subject "*Information not necessarily from an extraneous source*", reference may also be made to *Bhimraj Madan Lal v State of Bihar*, (1984) Tax LR 3002 (Pat—FB).

Pages 3037-3038: section 147(b):

On the subject "*Error discovered on a reconsideration of the same material—no section 147(b) proceedings possible*", reference may also be made to—

- (1) *Aryodaya Spng. & Wvg. Co. Ltd. v ITO*, (1983) 144 ITR 817 (Guj) [It would not be open to the Income-tax Officer to reopen the completed assessment upon a reappraisal of the material considered by him during the original assessment].
- (2) *H. H. Maharaja Shri Lokendra Singji v CIT*, (1987) 166 ITR 407 (MP).

Page 3040: section 147(b):

After serial No. (5), giving illustrative cases on mere change of opinion in the context of initiation under section 147(b), *add*,—

"(6) Original assessment completed on the basis of the annual value of the property shown by the assessee. Reopening of assessment on the ground that the annual value should be higher in view of a fresh valuation of the property in a subsequent year for wealth-tax assessment purposes. Held, there was only change of opinion [*CIT v Pranchand Bhandari*, (1984) 145 ITR 515 (Mad)].

(7) Reopening of assessment was made on the ground that the deduction, in the original assessment, was erroneously allowed as the income was not

attributable to business of banking. Held, the reopening was on mere change of opinion [*CIT v Dhar Central Co-operative Bank*, (1984) 149 ITR 438 (MP)].

(8) Reopening of assessment on the ground that the assessee had not accounted properly for recovery from waste material was held based on mere change of opinion [*Sunrolling Mills Pr. Ltd. v ITO*, (1986) 160 ITR 412 (Cal)].

(9) Reopening of assessment for withdrawal of excess development rebate allowed was held not justified as the same was based on change of opinion [*CIT v Madras Rubber Factory Ltd.*, (1984) 39 CTR (Mad) 296].”

Page 3045: section 147(b):

After serial No. (9), giving illustrative cases where action under section 147(b) was held not justified, *add*,—

“(10) Reopening of the assessment of a shareholder for modifying relief under section 80K was held unwarranted [*CIT v C. P. Modi & Sons*, (1986) 157 ITR 492 (Del)].”.

Page 3046: section 147(b):

After serial No. (6), giving illustrative cases where the initiation of proceedings under section 147(b) was held to be valid, *add*,—

“(7) Information about correct rate of exchange received by the Income-tax Officer was held sufficient as to justify initiation under section 147(b) [see, *Chettinad Corporation Pr. Ltd. v CIT*, (1984) 147 ITR 57 (Mad)].

(8) Original assessment was made on the basis that the goods imported on the strength of import licences were sold by the assessee. Subsequent information led to the conclusions that the sale transactions were bogus and the import licences themselves were sold. Reopening of assessment was upheld [*A. V. Malliah Chettiar & Sons v CIT*, (1985) 153 ITR 659 (Mad)].

(9) In the original assessment, interest on overdraft was allowed in its entirety. Subsequent information that a part of the bank overdraft had been utilised for a new business which was separate and distinct from the existing business. Reassessment proceedings for disallowing proportionate interest was upheld [*Dey's Medical Stores Mfg. (P.) Ltd. v CIT*, (1986) 162 ITR 630 (Cal)].

(10) The information that the deductions under sections 80K, 80L and 80M had been allowed before considering the depreciation, has been held sufficient to clothe the Income-tax Officer with the jurisdiction to reopen the assessment [*Jameson & Magrudar Co. Pr. Ltd. v ITO*, (1987) 167 ITR 77 (Cal)].

Also see, *K. C. Saigal v R. P. Saigal*, (1983) 14 Taxman 465 (Del).”.

Pages 3049-3050: section 147:

On the subject “*The two clauses of section 147, whether mutually exclusive?*”, reference may also be made to—

(1) *CIT v Mrs Ayodhyakumari*, (1985) 154 ITR 604 (Raj), rectified in (1985) 156 ITR 898 (Raj). [Where reassessment proceedings were initiated under section 147(a), it is open to the appellate authority to treat it as one properly made under section 147(b) provided that on material on record all necessary conditions requisite under section 147(b) are satisfied]. Also see, *T. M. Kousali v ITO*, (1985) 155 ITR 739 (Karn); *Mysore Tobacco Co. Ltd. v CIT*, (1986) 157 ITR 606 (Karn); *CIT v Surendra Kumar Bhadani*, (1987) 164 ITR 323 (Pat); *Rajabally Hirji Meghani v S. H. Sahani*, (1987) Tax LR 1189 (Bom).

(2) *Mysore Tobacco Co. Ltd. v CIT*, (1986) 157 ITR 606 (Karn) [An initiation under section 147(b) cannot later be treated as one under section 147(a). Also see, *Sunrolling Mills Pr. Ltd. v ITO*, (1986) 160 ITR 412 (Cal) [even section 292B does not empower such conversion].

(3) *Jameson & Magrudar Co. Pr. Ltd. v ITO*, (1987) 167 ITR 77 (Cal) [although clauses (a) and (b) of section 147 contemplates two separate and mutually exclusive jurisdiction, that does not mean that the same set of facts cannot constitute 'inference' under clause (a) and 'information' under clause (b), when these come to the knowledge of the Income-tax Officer which leads him to believe that income has escaped assessment].

Also see, *CIT v Sardar Kehar Singh*, (1987) 167 ITR 556 (Raj); *Modi Charitable Fund Society v ITO*, (1983) 142 ITR 818 (All).

Pages 3051-3052: section 147:

At the end of the paragraphs titled "*Whether a question of fact or of law*", add,—

"These were held to be findings of fact:—

- (1) A finding by the Tribunal that there were materials or there were no materials justifying reopening under section 147(a) is one of fact [*CIT v Bhagwan Ltd.*, (1983) 144 ITR 699 (Cal); *Punjab Produce and Trading Co. Ltd. v CIT*, (1984) 146 ITR 85 (Cal); *Bishamber Nath Ram Sarup v CIT*, (1987) 163 ITR 87 (Del); *CIT v Ram Lal Manohar Lal*, (1986) 158 ITR 9 (Del)].
- (2) A finding of the Tribunal that there was no omission or failure on the part of the assessee is one of fact [*CWT v Maharaja Vibhuti Narain Singh*, (1987) 163 ITR 554 (All). Also see, *CIT v Shri Ram Kishan*, (1985) 44 CTR (Del) 374].
- (3) A finding of the Tribunal that the reopening under section 147(b) was not valid is one of fact [*CIT v Modipan Ltd.*, (1986) 57 CTR (All) 300].

These were held to be questions of fact:—

- (1) What is a material fact in a particular case is a question of fact [*K. C. P. Ltd. v ITO*, (1984) 146 ITR 284 (AP)].
- (2) Whether there was such non-disclosure of primary facts as had caused escapement of income from assessment is basically a

question of fact [*Indo-Aden Salt Mfg. & Trading Co. Pr. Ltd. v CIT*, (1986) 159 ITR 624 (SC)].

These were held to be questions of law:—

- (1) The questions whether there was any legal requirement to disclose the investment, whether the disclosure made in the wealth-tax return was sufficient and whether section 147(a) could be invoked on the facts of the case are questions of law [*Sardar Diwan Singh Kohli v CIT*, (1985) 153 ITR 638 (All)].
- (2) Whether the reopening under section 147(b) was bad in law [*CIT v Abhoji Rao Phalke*, (1985) 156 ITR 604 (MP)].
- (3) Whether reassessment proceedings were validly initiated [see, *Oil and Natural Gas Commission v CIT*, SLP (Civil) Nos. 3904-3905 of 1987: (1987) 166 ITR (St.) 110 (SC)].
- (4) Whether the material contained in a report could be considered as the basis for forming the belief of escapement [*CWT v Master Kairas Tarapore*, (1987) 61 CTR (Raj) 50].”.

Pages 3054-3056: section 148:

At the end of the paragraphs titled “‘Issued’ in section 149, whether means ‘served’?”, add,—

“Now the controversy on the point has been set at rest by the Supreme Court in *R. K. Upadhyaya v Shanabhai P. Patel* [(1987) 166 ITR 163, 165 (SC)], where it has been ruled that the scheme of the Income-tax Act, 1961, so far as notice for reassessment is concerned, is quite different from that of the 1922 Act. A clear distinction has been made out between ‘issue of notice’ and ‘service of notice’ under the 1961 Act. Section 149 of the 1961 Act, which provides the period of limitation, categorically prescribes that no notice under section 148 shall be issued after the period prescribed has lapsed. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income-tax Officer to proceed to reassess. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Service, under the new Act, is not a condition precedent to conferment of jurisdiction on the Income-tax Officer: it is a condition precedent only to the making of the order of assessment. In so holding the Supreme Court has reversed the decision in *Shanabhai P. Patel v R. K. Upadhyaya* [(1974) 96 ITR 141 (Guj)] and has impliedly approved the view taken in *Jai Hanuman Trading Co. Pvt. Ltd. v CIT* [(1977) 110 ITR 36 (Punj—FB)] and *New Bank of India Ltd. v ITO* [(1982) 136 ITR 679, 696 (Del)]. Patna Full Bench decision in *CIT v Sheo Kumari Debi* [(1986) 157 ITR 13 (Pat—FB)] is in consonance with the above Supreme Court ruling. The Patna Full Bench has overruled the decision in *CIT v Mohammad Quddus & Sons* [(1986) 157 ITR 11 (Pat)].”.

Pages 3056-3057: section 148:

On the subject “Service of a valid notice is a condition precedent to the validity of the reassessment”, reference may also be made to *Madan Lal*

Agarwal v CIT, (1983) 144 ITR 745 (All); *T. A. George v Ag. ITO*, (1985) 153 ITR 721 (Ker).

In *P. N. Sasikumar v CIT* [(1987) Tax LR 1056 (Ker)], the notice under section 148 was not served on the proper person. It was held that assessment in pursuance of such a notice was illegal and without jurisdiction. Such a fundamental infirmity could not be called a 'mere irregularity' which could be cured by relying on section 292B.

Page 3058: section 148:

On the subject "*Recording of reasons for issuing a 148 notice—...*", reference may also be made to *S. P. Divekar & A. P. Divekar v CIT*, (1986) 157 ITR 629 (Bom); *B. T. Shanker Hegde v ITO*, (1986) 26 Taxman 12 (Karn).

In *Vijayalakshmi Oil Industries v ITO* [(1985) 155 ITR 748 (Karn)], it is observed that a note is generally prepared by a subordinate or even by the Officer himself as an *aide memoire* or to help the memory or enable a superior officer to examine the same and pass his orders thereon. In the facts of that case, the note prepared by the Officer himself was held not to be treated as one recording his reasons as required under section 148.

Page 3059: section 148:

On the subject "*A notice may not state the reasons*", reference may also be made to *Sudini Pandurang Timblo v WTO*, SLP (Civil) Nos. 244 and 245 of 1985: (1985) 156 ITR (St.) 159 (SC).

Pages 3060-3061: section 148:

On the subject "*Reasons leading to the issue of notice—disclosure of*", reference may also be made to *Sharad L. Patel v ITO*, (1986) 159 ITR 791 (Bom)

Page 3062: section 148:

After line 9 from top, *add*,—

"In *Parameswara Ballakuraya v C Ag IT* [(1987) 164 ITR 536 (Ker)], it has been laid down that merely for the reason that there was a defect in the notice issued, the assessment or reassessment was not liable to be quashed."

Page 3063: section 148:

After line 2 from top, *add*,—

"**Reassessment notice can be sustained on the basis of only one valid ground.**—Where a reassessment notice under section 148 is issued on more than one ground, one of such grounds is sufficient to uphold the validity of such a notice. Other grounds, even though these are not sustainable, will not make such notice bad [*Jameson & Magrudar Co. Pr. Ltd. v ITO*, (1987) 167 ITR 77, 82 (Cal)]."

Page 3063: section 148:

At the end of the paragraphs titled "*Notice to be addressed to whom?—HUF and individual*", *add,—*

"In *Manilal Raghavji Kothari v CIT* [(1985) 156 ITR 661 (Pat)], there was effected a partial partition in the Hindu undivided family. A reassessment notice was issued in the name of the *karta* of the family, wherein it was specifically mentioned that assessment of the HUF had to be reopened. It was held that the notice was not invalid."

Page 3065: section 148:

Before the paragraph titled "*A notice in incorrect status is not valid*", *add,—*

"A notice in incorrect name is not valid.—A reassessment notice, under section 148, not mentioning correctly the name of the assessee is invalid. Even in response to such a notice a return is filed and an assessment or a reassessment is completed, such assessment or reassessment would not be valid one [*CIT v Bibhuti Bhusan Mallick*, (1987) 165 ITR 107 (Cal)]."

Page 3065: section 148:

At the end of the serial No. (1) under the paragraph titled "*Ineffective notice*", *add,—*"Also see, *T. A. George v Ag. ITO*, (1985) 153 ITR 721 (Ker)."

Pages 3065-3067: section 148:

At the end of the paragraphs titled "*Ineffective notice*", *add,—*

"(8) Where a reassessment notice is issued in the name of a dead person, initiation of reassessment proceedings against a dead person has no existence in the eye of law [*CIT v Surendra Kumar Bhadani*, (1987) 164 ITR 323 (Pat)].

On the question of validity or otherwise of a reassessment notice, reference may also be made to *A. Avaran v ITO*, SLP (Civil) No. 1938 of 1987: (1987) 166 ITR (St.) 109 (SC)."

Page 3067: section 148:

Before line 11 from bottom, *add,—*

"In *Tiwari Kanhaiya Lal v CIT* [(1985) 154 ITR 109 (Raj)], it has been observed that where the assessee feels that it is not necessary to file a return in response to notice under section 148, he may inform the Income-tax Officer that earlier-filed-return may be treated as a return filed in response to notice under section 148. In such a case, the earlier return can be treated as the fresh return filed in response to notice under section 148."

Page 3069: section 148:

After line 11 from top, *add,—*

"No reassessment proceedings against a HUF statutorily ceased to exist.—Where there is cessation or extinction of a Hindu undivided family under a

statutory provision, no assessment or reassessment proceedings can be initiated against such a family [*Sreepadam v CWT*, (1985) 155 ITR 318 (Ker)].”.

Page 3069: section 148:

At the end of the paragraph titled “*Waiver—Meaning of*”, add,—

“The failure of the assessee to raise objection to the validity of a reassessment notice before the assessing authority does not amount to waiver [*Usha Sales (Pr.) Ltd. v State of Bihar*, (1985) Tax LR 2852 (Pat)].”.

Page 3071: section 148:

On the subject “*Waiver of a 148-notice is not possible*”, reference may also be made to *T. A. George v Ag. ITO*, (1985) 153 ITR 721 (Ker).

Page 3072: section 148:

On the subject “*More than one initiation*”, reference may also be made to *CIT v Surendra Kumar Bhadani*, (1987) 164 ITR 323 (Pat).

Page 3072: section 148:

In last line of the paragraph titled “*A second notice during pending of reassessment proceedings*”, after “39 ITR 418 (Punj)”, add,—“; *CIT v Surendra Kumar Bhadani*, (1987) 164 ITR 323 (Pat)”.

Pages 3074-3075: section 149:

On the subject “*Time-limit for service (ought to be ‘issue’) of notice—section 149*”, reference may also be made to *Oriental Carpet Manufacturers (India) Ltd. v ITO*, (1987) 31 Taxman 80, 85-86 (Punj).

Page 3076: section 149:

On the subject “*Where initiation beyond eight years was held not proper*”, reference may also be made to *Bhim Singh v ITO*, (1983) 143 ITR 620 (Punj); *K. R. Aswathanarayana Setty v CIT*, (1986) 158 ITR 203 (Karn).

Pages 3077-3078: section 150:

At the end of the paragraphs titled “*Exceptional cases where time-limit for issuance of a 148-notice does not apply*”, add,—

“In the facts of *Mysore Cements Ltd. v ITO* [(1987) 167 ITR 370 (Karn)], it has been held that the reassessment notice did not suffer from any illegality and the action of the Income-tax Officer was saved by the provisions of section 150(1). Also see, *CIT v Surendra Kumar Bhadani*, (1987) 164 ITR 323 (Pat).

But, in the facts of *Consolidated Coffee Ltd. v ITO* [(1985) 155 ITR 729 (Karn)], the reassessment notice under section 148 on the assumption that section 150(1) was applicable, has been held to be without jurisdiction and illegal.”.

Pages 3085-3086: section 152:

At the end of the paragraphs titled "*Right of the assessee in respect of reopened assessment—section 152(2)*", *add,—*

"Section 147 is subject only to the right of the assessee given by section 152(2) to have the proceedings dropped in cases of reassessment under section 147(b) by showing that he had been assessed on an amount not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account or the original assessment, etc., had been properly made [*Dr. Ravishanker Tapa v CIT*, (1987) 165 ITR 81, 86 (MP)].

Also see, *CIT v Indian Rockword Co. Ltd.*, SLP (Civil) Nos. 6926-28 of 1982: (1984) 150 ITR (St.) 78 (SC)."

Page 3091: section 153:

After line 8 from top, *add,—*

'V. *The Taxation Laws (Amendment) Act*, 1984.—The scope and effect of the amendments made by this Act in section 153 have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

'Amendment of section 153 of the Income-tax Act relating to time-limit for completion of assessments in certain cases.—18.1 Under section 153(1) of the Income-tax Act, an order of assessment cannot, ordinarily, be made after the expiry of two years from the end of the assessment year in which the income was first assessable or the expiry of one year from the date of the filing of a return or a revised return, whichever is later. This provision has resulted in a practical difficulty in cases where an order of assessment is made by the Income-tax Officer under section 143(1) of the Act without requiring the presence of the assessee or the production by him of any evidence in support of the return filed by him. In such cases, the assessee is entitled under section 143(2)(a) of the Act to make an application within one month to the Income-tax Officer objecting to such assessment. On receipt of an application under this provision, the Income-tax Officer is required to make a fresh assessment after considering the objections raised by the assessee

18.2 It had come to notice that, in certain cases, where order of assessment under 143(1) of the Act was made towards the expiry of the period of limitation laid down in section 153(1), the Income-tax Officer was not in a position to make a fresh assessment because the period of limitation had expired by the time the application filed by the assessee under section 143(2)(a) raising objections against the said assessment order was taken up for consideration by the Income-tax Officer.

18.3 With a view to removing this difficulty, the Amending Act has inserted a new clause (d) in sub-section (1) of section 153 of the Act to secure that, in such cases, the fresh assessment may be made by the Income-tax Officer within the period of limitation laid down under the existing pro-

visions of section 153(1) or before the expiry of six months from the end of the month in which an application under clause (a) of sub-section (2) of section 143 of the Act is made by the assessee, whichever is later. The aforesaid amendment takes effect from 1st October, 1984.

Amendment of section 153 of the Income-tax Act in consequence of insertion of section 158A.—19.1 The Amending Act has inserted a new section 158A in the Income-tax Act relating to procedure when assessee claims that identical question of law is pending before the High Court or Supreme Court. In consequence of the insertion of this section, the Amending Act has inserted a new clause (iva) in *Explanation 1* below sub-section (3) of section 153 of the Income-tax Act. The new clause seeks to secure that in computing the period of limitation for the purposes of section 153, the period (not exceeding sixty days) commencing from the date on which the Income-tax Officer received the declaration under sub-section (1) of new section 158A and ending with the date on which the order under sub-section (3) of that section is made by him shall be excluded.

19.2 The aforesaid amendment takes effect from 1st October, 1984, that is, the date from which new section 158A has been inserted in the Income-tax Act.’”.

Page 3091: section 153:

After line 10 from top, *add*,—

“**Period of limitation—strict construction needed.**—The fixation of periods of limitation must always be, to some extent, arbitrary, and may frequently result in hardship. But, in construing such provisions, equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide [*M. K. Srikanta Setty v CIT*, (1986) 160 ITR 517 (Karn)].”.

Pages 3093-3094: section 153:

On the subject “*Longer period if there is concealment of income, etc.—section 153(1)(b)*”, reference may also be made to *H. G. Gupta & Sons v CIT*, (1985) 45 CTR (Del) 20; *Nanjappa Textiles v CIT*, (1985) 153 ITR 109 (Mad).

Pages 3094-3095: section 153:

On the subject “*Period extended when a belated or revised return filed—section 153(1)(c)*”, reference may also be made to *Nanjappa Textiles v CIT*, (1985) 153 ITR 109 (Mad); *Vimalchand v CIT*, (1985) 155 ITR 593 (Raj); *Smt. Sobharani v CIT*, (1986) 160 ITR 453 (Raj); *Balish Singh & Co. v CIT*, (1987) 165 ITR 575 (Cal); *Eapen Joseph v CIT*, (1987) 168 ITR 26 (Ker).

Pages 3095-3096: section 153:

On the subject “*Time-limit for making reassessments—section 153(2)*”,

reference may also be made to *Shri Hazoor Singh v CIT*, (1986) 160 ITR 746 (Punj).

Page 3096: section 153:

On the subject "*New period for completion of fresh assessments—section 153(2A)*", reference may also be made to *Shri Prem Nath Mayor v CIT*, (1984) 148 ITR 588 (Punj); *Gulabchand Motilal v CIT*, (1987) 34 Taxman 456 (MP). Cf. *P. K. Sankaran v STO*, (1983) Tax LR 3037 (Ker).

Pages 3097-3098: section 153:

On the subject "*Periods to be excluded in computing the time-limit*" reference may also be made to—

(1) *Late Gulabchand Manakchand v CIT*, (1984) 148 ITR 404 (Mad); *Angad Bai v CIT*, (1987) 163 ITR 871 (MP) [cases relating to exclusion of period under clause (iv) of *Explanation 1* to section 153].

(2) *Golcha Properties (P.) Ltd. v CIT*, (1987) 166 ITR 259 (Raj) [a case relating to exclusion of period under clause (i) of *Explanation 1* to section 153]. Also see, *Gaurhari Singhania v WTO*, (1986) 159 ITR 785 (All).

(3) *Vinod Kumar Didwania v ITO*, (1986) 159 ITR 91 (Mad) [a case relating to exclusion of period under clause (v) of *Explanation 1* to section 153].

Page 3099: section 153:

On the subject "*No assessment possible after the expiry of period of limitation*", reference may also be made to *Vimalchand v CIT*, (1985) 155 ITR 593 (Raj); *Smt. Sobharani v CIT*, (1986) 160 ITR 453 (Raj).

Page 3104: section 153:

After serial No. 4, listing cases where the initiation of reassessment proceedings or completion of assessment, after expiry of normal period of limitation, was held to be valid by reason of the persons being intimately connected, *add*,—

"5. *Bhagwan Das Sita Ram (HUF) v CIT*, (1984) 146 ITR 563 (SC), **affirming**, *CIT v Bhagwan Das Sita Ram*, (1975) 99 ITR 534 (All—FB) given at serial No. 20 at page 3104 of Vol. 3 [larger HUF and smaller HUF].

6. *Manaklal Porwal v CIT*, (1985) 155 ITR 648 (Raj) [Firm and its partner]."

Page 3107: section 153:

After line 6 from top, *add*,—

"The expression 'an order of any court' in section 153(3)(ii) means an order of any and every court in the country. The hierarchy and status of the court in the country is not decisive. All that this provision provides is that it must a court and there must be an order of a court. The nature

of the court and the nature of the order made by the court has no relevance. If there is an order of a court, whatever be its status, then the bar of limitation is automatically lifted [*T. M. Kousali v ITO*, (1985) 155 ITR 739, 747 (Karn)]. That case has proceeded on the basis that section 153(3) (ii) removes the bar of limitation for initiation of reassessment proceeding. With due respect, it is submitted that that section 153(3) (ii) removes the bar of limitation for completion, *inter alia*, of reassessment and not for initiation of reassessment proceedings.

In *Mohammadi Begum v CIT* [(1986) 158 ITR 662 (AP)], the fresh assessment made by the Income-tax Officer in pursuance to the direction given by the Commissioner in exercise of his powers under section 264 has been held to be covered by section 153(3) (ii) and, therefore, not barred by limitation.

Still, the intent, purpose and import of the finding or direction in the appellate order will determine the character, scope and limitations of the assessment proceedings taken in pursuance of such finding or direction [*CIT v Mohini Thapar Charitable Trust*, (1986) 160 ITR 408, 410 (Cal)]. In that case, the first appellate authority set aside the assessment order and directed to make a fresh assessment according to law. It was held that this was not a case where it could be said that the fresh assessment was absolved of the period of limitation prescribed in that regard. In the facts of that case, the fresh assessment order was held barred by limitation.

But, a contrary view has been taken, in *R. K. Sawhney, Executor of the Estate of Late R. B. Nathu Ram v CIT* [(1987) 166 ITR 128 (Del)], to the effect that where an assessment is set aside by an appellate order with a direction to make a fresh assessment, the provisions removing bar of limitation have application. Similar view has been taken in *CIT v Chitranjali* [(1986) 159 ITR 801 (Cal)].”

Page 3110: section 153:

After line 27 from top, *add*,—

“In the facts of *Mysore Tobacco Co. Ltd. v CIT* [(1986) 157 ITR 606 (Karn)], reassessment under section 147(b) read with section 150 and *Explanation 2* to section 153 was upheld.”

Page 3111: section 153:

Before line 9 from bottom, *add*,—

“In the facts of *CIT v Dhanpatram Chhotelal* [(1985) 156 ITR 682 (Pat)], *Explanation 3* to section 153 was held applicable and the assessment made in the status of a registered firm was held not time-barred.”

Pages 3112-3113: section 153:

On the subject “*Period of limitation for completion of assessment only and not for communication to the assessee*”, reference may also be made to—

(1) *Ramanand Agarwalla v CIT*, (1985) 151 ITR 216 (Gauh) [where

the notice of demand issued after the expiry of the period of limitation does not make the assessment as time-barred as the notice of demand does not form part of the assessment order].

(2) *K. U. Srinivasa Rao v CWT*, (1985) 152 ITR 128 (AP) [assessment order passed within the period of limitation but communicated thereafter—not barred by limitation].

Page 3113: section 153:

On the subject "*No revival of time-barred remedy by change of law*", reference may also be made to *Warangal District Co-operative Marketing Society Ltd. v State of Andhra Pradesh*, (1984) Tax LR 2968 (AP).

Page 3116: section 154:

At the end of the page, *add*,—

"IV. *The Taxation Laws (Amendment) Act, 1984*.—The scope and effect of the amendments made by this Act in section 154 have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

'Amendment of section 154 relating to rectification of mistakes.—20.1 Section 154 of the Income-tax Act empowers the Income-tax Officer, the Appellate Assistant Commissioner, the Commissioner (Appeals) and the Commissioner of Income-tax to rectify mistakes apparent from the record in the orders passed by them. An order of rectification can be made within a period of four years from the date of the passing of the order sought to be rectified.

20.2 The Amending Act has substituted sub-section (1) of section 154 by a new sub-section. The new sub-section provides that with a view to rectifying any mistake apparent from the record, an income-tax authority referred to in section 116 may amend any order passed by it under the provisions of the Act. The effect of the substituted sub-section, therefore, will be that all income-tax authorities referred to in section 116 will be empowered to rectify any mistake apparent from the record in any order passed by them under the provisions of the Income-tax Act.

20.3 The Amending Act has also amended sub-section (7) of section 154 with a view to securing that the period of four years specified in that sub-section for rectification of mistakes shall be reckoned from the end of the financial year in which the order sought to be amended was passed by the concerned income-tax authority, and not from the date of such order as at present. This modification would facilitate the income-tax authorities in keeping track of the period of limitation.

20.4 The aforesaid amendments take effect from 1st October, 1984.'".

Page 3119: section 154:

On the subject "*Mistake may be either of law or of fact*", reference may also be made to *Sirsa Industries v CIT*, (1984) 147 ITR 238 (Punj); *CIT v Calcutta Steel Co. Ltd.*, (1985) 153 ITR 488 (Cal).

Pages 3119-3122: section 154:

On the subject "*When a mistake can be said to be apparent from the record?*", reference may also be made to—

(1) *T. Manickavasagam Chettiar v CIT*, (1983) 143 ITR 269 (Mad) [Application of a provision of law, which is not applicable to the facts of a particular case, amounts to a mistake apparent from the record]. Also see, *CIT v Sundaram Textiles Ltd.*, (1984) 149 ITR 525 (Mad).

(2) *Sarangpur Cotton Mfg. Co. Ltd. v CIT*, (1985) 152 ITR 251, 253 (Guj—FB) [Whether, on the facts of a case, it is possible to say that there is a "disputed" question on which two views are possible would depend upon the approach to the case and the attitude of the parties to the case. If parties do not feel that two views are possible, then, there is no scope for consideration of such a question. If computation, however difficult it may be, is made by the Income-tax Officer, with which computation, or with which approach to the computation, the assessee has no grievance. the court cannot doubt "the power of rectification"].

(3) *CIT v Calcutta Steel Co. Ltd.*, (1985) 153 ITR 488 (Cal) [A mistake apparent from the record must be an obvious mistake and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions]. Also see, *Clan Line Steamers Ltd. v ITO*, (1985) 156 ITR 631 (Cal); *CIT v Food Specialities Ltd.*, (1985) 156 ITR 790 (Del); *Jaipur Udyog Ltd. v ITO*, (1985) 156 ITR 377 (Raj).

(4) *CIT v Quilon Marine Produce Co.*, (1986) 157 ITR 448 (Ker) [Non-consideration of an appropriate provision of law is a glaring, obvious and self-evident mistake apparent from the record].

(5) *CIT v Shell Petroleum Co. Ltd.*, (1987) 164 ITR 357 (Cal) [No mistake apparent from the record is possible where there are two conceivable views on a particular controversy]. Also see, *CIT v Jagannath Narayan Kutumbik Trust*, (1983) 144 ITR 526 (MP); *Adarsha Dugdhalaya Pr. Ltd. v ITO*, (1987) 168 ITR 48 (Bom).

(6) *West Bengal State Warehousing Corporation v CIT*, (1986) 157 ITR 149 (Cal) [A glaring and obvious error amounts to a mistake apparent from the record].

(7) *Addl. CIT v India Tin Industries (P.) Ltd.*, (1987) 166 JTR 454 (Karn) [Overlooking a mandatory provision of law which leaves no discretion to the taxing authority is a mistake which can be rectified].

Page 3122: section 154:

After line 19 from top, *add*,—

"No doubt, the jurisdiction under section 154 of the 1961 Act to rectify mistakes is wider than that provided in Order XLVII, rule 1, of the Code of Civil Procedure, 1908. None the less, there must be material to support the claim for a particular relief and unless such material can be referred to, no grievance can be made if the Income-tax Officer refuses such relief [*Anchor Pressings (P.) Ltd. v CIT*, (1986) 161 ITR 159, 162-63 (SC)].".

Page 3123: section 154:

At the end of the paragraphs titled "*Unclaimed deductions cannot be allowed by rectification*", *add,—*

"The decision of the Allahabad High Court in *Anchor Pressing (P.) Ltd. v CIT* [(1975) 100 ITR 347 (All), referred to in lines 5-6 of the said paragraph] has been affirmed by the Supreme Court in *Anchor Pressings (P.) Ltd. v CIT* [(1986) 161 ITR 159 (SC)]. The Supreme Court ruled that a relief neither claimed nor granted in the original assessment cannot be granted in exercise of power of rectification if there is no material on record to support claim for such relief."

Pages 3123-3124: section 154:

At the end of the paragraphs titled "*Record—what it means and implies?*", *add,—*

"The record of an income-tax assessment can be regarded as part of the record of the corresponding super profits tax assessment. The converse can also be true. To the extent that under section 20(2) of the Super Profits Tax Act, 1963, information contained in the super profits tax record is employed for the purpose of the income-tax proceedings, the super profits tax record becomes part of the income-tax record [*Anchor Pressings (P.) Ltd. v CIT*, (1986) 161 ITR 159, 163-64 (SC)].

Also see, *Bihar State Road Transport Corporation v CIT*, (1986) 162 ITR 114 (Pat)."

Page 3125: section 154:

At the end of the paragraphs titled "*Mistake revealed by subsequent decision of the High Court, when mistake apparent from the record*", *add,—*

"A mistake revealed by the judgment of the High Court can justify a rectification of an order contrary to such judgment. This is more so when at the time of exercise of power of rectification there is no contrary view expressed by any other High Court because the validity of an action taken by the Income-tax Officer must be judged on the facts as they were at the time when the action was taken [*CIT v Purnabpore Co. Ltd.*, (1986) 159 ITR 362 (Cal)].

Also see, *CIT v Continuous Stationery Co. P. Ltd.*, SLP (Civil) No. 10778 of 1980: (1985) 156 ITR (St.) 162 (SC)."

Pages 3125-3126: section 154:

On the subject "*Rectification following the law laid down by the High Court of own State although other High Courts took different view, whether permissible?*", reference may also be made to *CIT v Jagannath Narayan Kutumbik Trust*, (1983) 144 ITR 526 (MP) [holding that in such a case rectification is not permissible].

Pages 3126-3127: section 154:

On the subject "*Rectification following the law laid down in a Supreme*

Court judgment", reference may also be made to *Bombay Motors v CIT*, (1986) 157 ITR 623 (Raj); *CIT v Hindustan Zinc Ltd.*, (1986) 50 CTR (Raj) 222.

Page 3128: section 154:

On the subject "*Supreme Court decision, resolving conflict of judicial opinion on a particular point, does not obliterate the existence of a debatable point prior to such decision*", reference may also be made to *CIT v Ganga Iron Industries*, (1985) Taxation 79(3)-320 (MP).

Pages 3128-3129: section 154:

On the subject "*Rectification following a retrospective legislative amendment*", reference may also be made to—

(1) *CIT v R. M. & Co.*, (1984) 148 ITR 353 (AP) [An order which is inconsistent with the provisions of a subsequent amendment of law with retrospective effect, must be deemed to suffer from a mistake apparent from the record and is liable to be rectified under section 154].

(2) *J. M. Bhatia, AAC v J. M. Shah*, (1985) 156 ITR 474 (SC) reversing, *J. M. Shah v J. M. Bhatia, AAC*, (1974) 94 ITR 519 (Bom), referred to in lines 7 and 8 from top of page 3129 of Vol. 3 [An appellate authority is empowered to rectify, within the period of limitation prescribed in that regard, its appellate order in the light of the retrospective amendment of the relevant provision of law notwithstanding the fact that no further appeal was preferred against that order or that the requisite period for further appeal was allowed to expire]. In view of this Supreme Court ruling, the decisions to the contrary in *CWT v Smt. Rajkumari Bangur* [(1986) 158 ITR 47 (Raj)]; *CWT v Smt. Kamla Devi Bangur* [(1987) 163 ITR 385 (Raj)] and *Padmavati Jaykrishna v CWT* [(1976) 105 ITR 115 (Guj)], referred to in lines 13-14 from top of page 3129 of Vol. 3] do not seem to lay down the law correctly on the point.

Pages 3129-3130: section 154:

On the subject "*Proper authority for passing rectification order pursuant to retrospective amendment*", reference may also be made to *Seshasayee Paper and Boards Ltd. v IAC*, (1986) 157 ITR 342 (Mad) [holding that directions given in an appellate order of the Tribunal made in accordance with the then existing provision of law and given effect to accordingly cannot be undone, under the guise of exercising power under section 154, by a lower authority in the light of the subsequent retrospective amendment of that provision even though the validity of such retrospective amendment was upheld by the Supreme Court].

Page 3134: section 154:

After serial No. (39), dealing with illustrative cases where there were held to be errors apparent from the record so as to justify action under section 154, *add*,—

"(40) Relief under the then section 80T was granted to a partner by mistake—withdrawal by resorting to rectification proceedings was held justified [*T. Manickavasagam Chettiar v CIT*, (1983) 143 ITR 269 (Mad)].

(41) Income from sale of import entitlements obtained by a manufacturer and exporter of its own manufactured goods was treated as not attributable to manufacturing activity and the assessee-company was taxed on the basis of a non-industrial company—rectification held possible to treat the company as an industrial company because such income should be treated as income attributable to manufacturing activity [*Obeetee (P.) Ltd. v CIT*, (1983) 143 ITR 793 (All)].

(42) An allowance of a deduction, which was *prima facie* against the law, could be withdrawn through rectification proceedings [*Sirsa Industries v CIT*, (1984) 147 ITR 238 (Pun)].

(43) Grant of extra-shift allowance on electrical machinery contrary to the statutory provisions in that regard [*CIT v Sundaram Textiles Ltd.*, (1984) 149 ITR 525 (Mad)].

(44) Giving of credit for tax deducted at source in respect of income not offered for assessment [*CIT v Tanjore Permanent Bank Ltd.*, (1984) 149 ITR 788 (Mad)].

(45) Omission to take into account such amount as was liable to additional tax on the 'relevant amount of distributions of dividends' for the assessment year 1966-67 [*Sarangpur Cotton Mfg. Co. Ltd. v CIT*, (1985) 152 ITR 251 (Guj—FB)].

(46) In calculating penalty u/s. 271(1)(a) on a registered firm treating it as unregistered firm as per section 271(2), failure to deduct the annuity deposit which would have been payable by an unregistered firm [*Maya Ram Jia Lal v CIT*, (1985) 152 ITR 608 (Pun)].

(47) Grant of relief under sections 80L and 80M on misreading of section 80A(2) [*CIT v Bengal Assam Steamship Co. Ltd.*, (1985) 155 ITR 26 (Cal)].

(48) Failure to charge tax on income of a charitable trust whose exemption was indisputably liable to be forfeited for contravention of the provisions of section 13(1)(c) read with section 13(3) [*CIT v Shree Eklingji Trust*, (1985) 155 ITR 383 (Raj)].

(49) Grant of rebate to a person, who was not ordinarily resident, treating him as a non-resident [*Chimanbhai K. Patel v CWT*, (1985) 156 ITR 373 (Guj)].

(50) Exemption neither claimed nor granted in respect of an income indisputably eligible for exemption could be claimed and granted through rectification proceedings [*West Bengal State Warehousing Corporation v CIT*, (1986) 157 ITR 149 (Cal)].

(51) Allowance of weighted deduction in respect of trade discount which is not 'expenditure' within the meaning of section 35B [*CIT v Quilon Marine Produce Co.*, (1986) 157 ITR 448 (Ker)].

(52) Rectification proceedings for withdrawing the deduction of excess profits tax and business profits tax liabilities against income from other

sources were held justified [*Guru Prasad v CIT: Chhattu Ram v CIT: Chhattu Ram Horil Ram (P.) Ltd. v CIT*, (1986) 158 ITR 278 (Pat); *Ram Chandra Prasad Bhadani v CIT*, (1987) 167 ITR 313 (Pat)].

(53) Failure to gross-up income of a foreign national in a case where the taxes of the foreign national were paid by the Indian company [*Zdzizlaw Skakuz v CIT: Bujniewick Zenon v CIT*, (1986) 158 ITR 420 (AP)].

(54) Grant of extra-shift allowance for the full year to the assessee who worked only for a part of the year [*CIT v Purnabpore Co. Ltd.*, (1986) 159 ITR 362 (Cal)].

(55) Mistake in determining the written down value [*Bihar State Road Transport Corporation v CIT*, (1986) 162 ITR 114 (Pat)].

(56) Failure to levy additional surcharge on unearned income of the assessee [*CIT v Shri Sandeep Bipinchandra*, (1987) 163 ITR 157 (Guj)].

(57) Failure to impose penalty under section 271(1)(a) on a registered firm treating the same as an unregistered firm as per section 271(2) [*Ramanand Singh & Co. v CIT*, (1987) 164 ITR 78 (Pat)].

(58) Failure to compute tax on capital gains payable by a registered firm inspite of the own High Court decision holding a registered firm liable to pay tax on capital gains [*Standard Radiators v CIT*, (1987) 165 ITR 178 (Guj)].

(59) Failure to grant a rebate to the assessee to which it is entitled on undisputed facts [*Burmah Oil Co. Ltd. v ITO*, (1987) 165 ITR 264 (Cal)].

(60) Allowance of full development rebate overlooking the mandatory provisions about creation of development rebate reserve in that regard [*Addl. CIT v India Tin Industries (P.) Ltd.*, (1987) 166 ITR 454 (Karn)].

(61) Non-withdrawal of rebate of income-tax in case of a widely-held company in respect of the whole amount of the dividends other than dividends on preference shares under the mandatory provisions of law in that regard [*Jaipur Udyog Ltd. v CIT*, (1987) 32 Taxman 42 (Raj)].”.

Page 3135: section 154:

Serial No. (10): The decision in *Anchor Pressing (P.) Ltd. v CIT* [(1975) 100 ITR 347 (All)], has been affirmed in *Anchor Pressings (P.) Ltd. v CIT* [(1986) 161 ITR 159 (SC)].

Page 3139: section 154:

After serial No. (43), dealing with illustrative cases where there were held to be errors not apparent from the record so as not to justify action under section 154, add,—

“(44) Allowance of interest under section 214 was held not possible through rectification proceedings as the instalments of advance tax were not paid on the due dates in accordance with section 211 but within the financial year itself [*CIT v Jagannath Narayan Kutumbik Trust*, (1983) 144 ITR 526 (MP)].

(45) An exemption granted could not be withdrawn through rectification proceedings where the prospective amendment coined a definition of a particular term which, prior to such amendment, was susceptible of different meanings [*CWT v Smt. Sharda Devi Mittal*, (1984) 146 ITR 510 (MP)].

(46) Relief granted under section 80M without taking into account the depreciation of earlier years was held not be withdrawn through rectification proceedings [*CIT v Ellenbarrie Tea Co. Ltd.*, (1984) 146 ITR 617 (Cal)].

(47) Disallowance of an already allowed deduction in respect of gratuity liability was held not possible through rectification proceedings [*CIT v East India Cotton Association Ltd.*, (1984) 149 ITR 274 (Bom)].

(48) Withdrawal of development rebate already allowed cannot be effected through rectification proceedings on the basis of a disqualifying factor found to exist in a subsequent year without anything on record in that regard for the year concerned [*Abhinendra Kumar v CIT*, (1984) 150 ITR 189 (MP)].

(49) Increase in the quantum of disallowance made under section 40(c) by including an debatable item, say, guarantee commission, within the mischief of that section has been held not possible through rectification proceedings [*CIT v Godrej and Boyce Mfg. Co. Ltd.*, (1985) 151 ITR 496 (Bom)].

(50) Levy of dividend tax on excess dividend declared for assessment year 1965-66 was held not possible through rectification proceedings on the interpretation of a doubtful provision [*Addl. CIT v Bharat Vijay Mills Ltd.*, (1985) 152 ITR 255 (Guj)].

(51) Withdrawal of export rebate granted on cash subsidy and excise duty drawback treating these as forming part of 'sale proceeds' or 'turn-over' of export business could not be effected through rectification proceedings as it involved a debatable point [*CIT v Calcutta Steel Co. Ltd.*, (1985) 153 ITR 488 (Cal)].

(52) Reduction in the quantum of the depreciation already allowed on the ground that the plant and machinery were used for a part of the year, was held not justified through rectification proceedings as it involved a debatable point [*Addl. CIT v Distillers Trading Corporation Ltd.*, (1985) 154 ITR 507 (Del)].

(53) Substitution of general (lower) rate of depreciation in place of the special (higher) rate of depreciation already applied has been held not possible through rectification proceeding [*Jaipur Udyog Ltd. v ITO*, (1985) 156 ITR 377 (Raj)].

(54) Withdrawal of interest given under section 244 on refund granted in respect of assessment year 1961-62 has been held not possible through rectification proceedings [*Clan Line Steamers Ltd. v ITO*, (1985) 156 ITR 631 (Cal)].

(55) Relief under section 80J not allowed for the year of experimental production could not be allowed for that year through rectification proceedings [*CIT v Food Specialities Ltd.*, (1985) 156 ITR 790 (Del)].

(56) Acceptance of computation of capital gains as worked out by the assessee in accordance with the principles laid down in one Supreme Court decision cannot be disturbed through rectification proceedings by applying principles laid down in another Supreme Court decision where both the decisions were available at the time of the original assessment [*CIT v United Mercantile Co. (Pr.) Ltd.*, (1986) 158 ITR 41 (Raj)].

(57) Relief under the then section 84, which was neither claimed nor granted in the original assessment, could not be claimed and granted through rectification proceedings unless precise factual material and clear data to support the claim were available in the income-tax assessment record or in connected record of super profits tax assessment [*Anchor Pressings (P.) Ltd. v CIT*, (1986) 161 ITR 159 (SC)].

(58) Withdrawal of interest awarded under section 244(1A) on refund of excess tax withheld under section 241 was held not possible through rectification proceedings on the ground that the assessee was entitled to interest under section 244(2) and not under section 244(1A) [*CIT v Bowater Corporation Ltd.*, (1986) 161 ITR 280 (Cal)].

(59) Higher rate of rebate allowed to the assessee on the basis that the shares on which dividends had been declared were preference shares, was held not to be reduced through rectification proceedings [*Rajasthan Financial Corporation v CIT*, (1987) 163 ITR 278 (Raj)].

(60) Inclusion of share of income from a firm which was thrown by the assessee into HUF hotchpotch could not be included in his individual assessment through rectification proceedings [*CIT v Onkar Nath Gupta*, (1987) 163 ITR 514 (Punj)].

(61) The order of rectification recomputing capital gains was held not justified as it had resulted in further error which is not permitted by law [*CIT v Russel Properties (P.) Ltd.*, (1987) 163 ITR 538 (Cal)].

(62) Withdrawal of depreciation allowed on dumpers was held not possible through rectification proceedings [*Shiv Construction Co. v CIT*, (1987) 165 ITR 160 (Guj)].

(63) Withdrawal of rebate on super-tax was held not possible through rectification proceedings as the question of withdrawal was controversial and necessitated complicated calculations [*CIT v Turner Morrison & Co. Ltd.*, (1987) 166 ITR 57 (Cal)].

(64) Withdrawal of interest allowed under section 214 to the assessee was held not possible through rectification proceedings on the ground that the advance tax was paid without first filing the estimate as that question involved a debatable point [*Addl. CIT v Distillers Trading Corporation Ltd.*, (1984) 19 Taxman 318 (Del)].

(65) Method of valuation employed by the assessee and accepted by the Income-tax Officer over past several years could not be set at naught through rectification proceedings [*Adarsha Dugdhalaya Pr. Ltd. v ITO*, (1987) 168 ITR 48 (Bom)].

Also see, *CIT v Ganganagar Sugar Mills Ltd.*, (1987) 164 ITR 245 (Raj); *Controller of Stores v CST*, (1985) Tax LR (NOC) 38 (All)."

Pages 3139-3140: section 154:

On the subject "*Interest u/s. 215 or 217 not charged—no rectification to charge such interest*", reference may also be made to—

(1) *CIT v Shri Mahinder Singh*, (1985) 156 ITR 882 (Del) [Interest under section 217 not charged in the original assessment could not be charged through rectification proceedings].

(2) *Bihar State Road Transport Corporation v CIT*, (1986) 162 ITR 114 (Pat) [Where positive income was computed as a result of a rectification order, interest under section 217 could be charged in rectification proceedings].

(3) *CIT v Sarju Prasad*, (1984) 148 ITR 718 (All) [Rectification proceedings were held justified for deleting interest charged under section 217(1A) as there was a reasonable cause for not filing the estimate or revised estimate in time].

Pages 3140-3141: section 154:

On the subject "*Charging of interest under section 139(8) by resorting to rectification proceedings—whether possible?*", reference may also be made to—

(1) *Addl. CIT v Chemical Limes*, (1984) 149 ITR 325 (Raj) [Interest under section 139(8) charged in original assessment was waived by passing a rectification order—withdrawal of such waiver not possible by passing a second rectification order].

(2) *CIT v Ashok Trading Co.*, (1986) 160 ITR 663 (Pat) [Interest not charged originally could be charged through rectification proceedings]. Also see, *CIT v M. N. Sen Gupta & Co.*, (1986) 160 ITR 670 (Pat); *CIT v Shree Laxmi Trading Co.*, (1986) 160 ITR 697 (Pat); *CIT v Tiwary Bechar & Co.*, (1987) 165 ITR 78 (Pat).

Page 3141: section 154:

On the subject "*Wrong reference to section is not fatal*", reference may also be made to *Addl. CIT v Pakco Engg. Pr. Ltd.*, (1983) 143 ITR 415 (Bom).

Pages 3141-3142: section 154:

At the end of the paragraphs titled "*Authorities empowered*", add,—

"It may be noted that section 154(1) has been substituted by a new sub-section by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984.

The newly substituted section 154(1) empowers any of the Income-tax authorities referred to in section 116 to amend any order passed by it under the provisions of the Act, with a view to rectifying any mistake apparent from the record.

None else than the authority passing the order concerned is empowered to pass the rectification order if the requisite conditions are fulfilled. Thus, the Income-tax Officer has no jurisdiction to rectify a mistake inherent in

the order passed by the Tribunal [*CIT v Shell Petroleum Co. Ltd.*, (1987) 164 ITR 357 (Cal)].”.

Page 3142: section 154:

At the end of the page, *add*,—

“Exercise of power of rectification presupposes existence of an order to be rectified.—For exercise of the power of rectification, it is a must that there must be an order which is sought to be rectified. Where there exists no order of assessment, an action taken for rectifying the order of assessment is not tenable [*Madhwa Ramachandra Mutalik v Ag. ITO*, (1981) 128 ITR 249, 250 (Karn)].”.

Page 3143: section 154:

At the end of the paragraph titled “*The words ‘any other order’ in section 154(1)(a) are not to be construed ejusdem generis*”, *add*,—

“It may be noted that section 154(1) has been substituted by a new sub-section by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984.”.

Pages 3143-3144: section 154:

At the end of the paragraphs titled “*Power of AAC to rectify mistakes*”, *add*,—

“In the facts of *Standard Radiators v CIT* [(1987) 165 ITR 178 (Guj)], the Appellate Assistant Commissioner was held to be within his powers in rectifying the appellate order.”.

Pages 3144-3146: section 154:

On the subject “*Appellate Tribunal's power to rectify*”, reference may also be made to the paragraphs titled “*Power to rectify its orders*” at pages 4384 to 4385 of Vol. 5 and additions thereto.

Pages 3148-3149: section 154:

On the subject “*No power of review*”, reference may also be made to *CIT v United Mercantile Co. (Pr.) Ltd.*, (1986) 158 ITR 41 (Raj).

Page 3149: section 154:

On the subject “*Limits of the power*”, reference may also be made to *CIT v Russel Properties (P.) Ltd.*, (1987) 163 ITR 538 (Cal) [holding that it is not the object of section 154 to perpetuate errors].

Pages 3150-3152: section 154:

On the subject “*Merger of the order in an appellate order—ITO's jurisdiction to rectify*”, reference may also be made to—

(1) *Citizen Watch Co. Ltd. v IAC*, (1984) 148 ITR 774 (Karn) [In case of a composite order, that portion of the order, which is not challenged before the appellate authorities, does not merge in the appellate order].

(2) *Addl. CIT v India Tin Industries (P.) Ltd.*, (1987) 166 ITR 454 (Karn) [Where a part of the assessment order is not subject-matter of the appeal before the appellate authority, such part does not merge in the appellate order and the Income-tax Officer is competent to rectify such part of the assessment order].

Also see, "*Doctrine of merger, how far forfeits Commissioner's powers?*", at pages 4594-4595 of Vol. 5.

Pages 3153-3155: section 154:

On the subject "*Notice for rectification—section 154(3)*", reference may also be made to *Asghear Ali Mohammad Ilyas v State of Uttar Pradesh*, (1983) 143 ITR 898 (All) [holding that a rectification order passed without giving opportunity of being heard to the assessee is void and is liable to be quashed through writ proceedings].

Pages 3157-3158: section 154:

At the end of the paragraphs titled "*Writ possible against an illegal notice*", add,—

"In the facts of *Asghear Ali Mohammad Ilyas v State of Uttar Pradesh* [(1983) 143 ITR 898 (All)], the alternative remedy was held not a bar to quashing a rectification order passed without giving opportunity of being heard to the assessee concerned."

Pages 3158-3159: section 154:

On the subject "*Assessment under the 1922 Act—Notice issued under section 154 of 1961 Act—rectification not invalid*", reference may also be made to *Guru Prasad v CIT: Chhattu Ram v CIT: Chhattu Ram Horil Ram (P.) Ltd. v CIT*, (1986) 158 ITR 278 (Pat); *Ram Chandra Prasad Bhadani v CIT*, (1987) 167 ITR 313 (Pat).

Page 3159: section 154:

At the end of line 11 of the paragraph titled "*Period of limitation—section 154(7)*", add,—"*A rectification order passed after the expiry of the prescribed period of limitation is of no effect being barred by limitation [E. M. Chokkalingam Chettiar v Ag. ITO, (1986) 161 ITR 216 (Karn)].*

It may be noted that as a result of the amendment of section 154(7) by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984, no rectification order under section 154 can be passed after the expiry of *four years from the end of the financial year in which the order sought to be rectified was passed* as against four years from the date of the order sought to be rectified."

Pages 3160-3161: section 154:

On the subject "*Rectification order made after passing of the reassessment order—period of limitation*", reference may also be made to—

(1) *CIT v Mysore Iron & Steel Ltd.*, (1986) 157 ITR 531 (Karn)

[In respect of rectification of a reassessment order, the period of limitation is to be reckoned from the reassessment order even though the original assessment was also rectified by passing a rectification order].

(2) *Kundan Lal Srikishan v CST*, (1987) Tax LR 2094 (SC) [In case of an application for rectification of a reassessment order, the period of limitation has to be reckoned from the reassessment order and not from the original assessment order].

Page 3161: section 154:

Before line 9 from the bottom, *add*,—

“Rectification of an earlier rectification order possible.—It is possible to make a second rectification order with reference to an earlier rectification order on fulfilment of the requisite conditions in that regard. In such a case, the period of limitation is to be reckoned from the first rectification order and not from the original assessment order [*Bihar State Road Transport Corporation v CIT*, (1986) 162 ITR 114 (Pat)].

In such a case, the second rectification order can have legs to stand upon only if the first rectification order itself is in existence. Where the first rectification order is set aside, there can be no scope for passing, or claiming any operation, of the second rectification order [*CIT v Vijaya Productions (P.) Ltd.*, (1985) 23 Taxman 284 (Mad)].”.

Page 3162: section 154:

On the subject “*Court can by mandamus compel the authority to rectify even if four years’ limitation period had expired*”, reference may also be made to *Smt. Rajamma v ITO*, (1985) 152 ITR 657 (Karn) [Where an application for rectification was not disposed of even after a long delay, the High Court directed the Income-tax Officer to dispose of such application within one month from the date of receipt of the order of the court].

Pages 3165-3166: section 154:

On the subject “*Section 154 and section 147 may overlap*”, reference may also be made to *Sirsa Industries v CIT*, (1984) 147 ITR 238 (Punj).

Page 3167: section 154:

At the end of the paragraphs titled “*Question of law*”, *add*,—

“The question whether rejection of application for rectification was valid is a question of law [*Bombay Motors v CIT*, (1986) 157 ITR 623 (Raj)]. Similarly, the question whether it was competent for the Inspecting Assistant Commissioner to make an order under section 154 is a question of law [*CIT v Maharaja Shri Umaid Mills Ltd.*, (1987) 164 ITR 268 (Raj)]. Also see, *CIT v K. N. Oil Industries*, (1987) 163 ITR 112 (MP).

But, in the facts of *Kaluram v CIT* [(1983) 141 ITR 589 (MP)], it has been held that no question of law arose from the order of the Tribunal. Also see, *CIT v Hindustan Zinc Ltd.*, (1986) 50 CTR (Raj) 222.

In *CIT v Onkar Nath Gupta* [(1987) 163 ITR 514 (Punj)], as the point of law was already settled by the same High Court, the Tribunal was not directed to refer the question of law.”.

Page 3184: section 155:

After line 14 from top, *add,—*

“X. By the Taxation Laws (Amendment) Act, 1984.—The scope and effect of the amendments [except insertion of section 155(7B)] made by this Act in section 155 have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

‘Amendments of section 155 of the Income-tax Act.—21.1 The Amending Act has made certain modifications in the provisions of section 155 of the Income-tax Act.

21.2 Under one of the amendments, a new clause (c) has been inserted in sub-section (1) of section 155. The new clause (c) seeks to secure that, where in respect of any completed assessment of a partner in a firm, it is found on any order passed under sub-section (4) of section 245D by the Settlement Commission on the application made by the firm that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the partner, with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be.

21.3 Under another amendment, a new clause (c) has been inserted in sub-section (2) of section 155. The new clause seeks to secure that, where in respect of any completed assessment of a member of an association of persons or a body of individuals, it is found on any order passed under sub-section (4) of section 245D by the Settlement Commission on the application made by the association or body that the share of the member in the income of the association or body, as the case may be, has not been included in the assessment of the member, or if included, is not correct, the Income-tax Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be.

21.4 Sub-sections (1), (2), (4), (7), (8), (9), (10), (10A) and (10C) of section 155 have also been amended to secure that the period of rectification laid down in the respective sub-sections shall be reckoned from the end of the financial year in which the relevant order was passed, and not from the date of the relevant order as at present. This modification would facilitate in keeping track of the period of limitation laid down for passing an order under section 155 of the Act.

21.5 The aforesaid amendments take effect from 1st October, 1984, [section 30, excluding clause (e), of the Amending Act].’

The scope and effect of the newly inserted section 155(7B) have been elaborated in the following portion of the departmental circular No. 397, dated 16th October, 1984, as under:—

'Other amendments—section 155.—16.1 The Amending Act has inserted a new sub-section (7B) in section 155 of the Income-tax Act relating to other amendments. This is in consequence of insertion of a new section 47A by section 13 of the Amending Act.

16.2 The new sub-section (7B) provides that where profits or gains arising from the transfer of a capital asset are not charged to tax under section 45 of the Act by virtue of clause (iv) or clause (v) of section 47 of the Act, but such profits and gains are deemed under the new section 47A to be income chargeable under the head “Capital gains”, the Income-tax Officer may make an order of amendment at any time before the expiry of four years from the end of the previous year in which the relevant capital asset was converted into, or treated as, stock-in-trade or, as the case may be, the parent company or its nominees or, as the case may be, the holding company ceased to hold the entire share capital of the subsidiary company.

16.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years. [section 30(e) of the Amending Act]’.

XI. *By the Finance Act, 1985.*—By this Act, section 155(11) has been omitted with effect from 1st April, 1986. The omission is consequential to the omission, by that Act, of section 80N.

XII. *By the Finance Act, 1986.*—By this Act, sub-sections (8) and (8A) of section 155 have been amended, with effect from 1st April, 1987, so as to bring these in lines with amended provisions of sub-sections (1) and (2) of section 54.

XIII. *By the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.*—By section 32(g) of this Act, the *Explanation* below section 155(4A) has been amended, with effect from 1st April, 1988. The amendment is consequential to the omission, by that Act, of section 32(1)(vi).

XIV. *By the Finance Act, 1987.*—By section 44 of this Act, section 155(12) has been omitted, with effect from 1st April, 1988. This omission is consequential to the amendments made, by that Act, in section 80-O.

Further, by section 74(c)(ii) of that Act, section 155(4) has been amended, with effect from 1st April, 1988. This amendment is consequential to the substitution, by that Act, of section 74 of the 1961 Act.

Also, by section 74(c)(v) of that Act, section 155(10A) has been amended, with effect from 1st April, 1988. This amendment is consequential to the insertion, by that Act, of section 2(29A) coining a definition of the expression ‘long-term capital asset’.”.

Page 3186: section 155:

After line 26 of the paragraph titled "*When a partner's assessment can be amended*", *add,—*

"It may be noted that section 155(1) has been amended in that regard by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984."

Page 3187: section 155:

At the end of the paragraph titled "*Larger limitation period*", *add,—*
"The starting point of this limitation period has been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984."

Page 3189: section 155:

At the end of the paragraph titled "*Rectification of the assessment of a retiring partner*", *add,—*

"Also see, '*Rectification of the assessment of retiring partner*', at pages 3625-3626 of Vol. 4."

Page 3189: section 155:

At the end of the paragraph titled "*Rectification of assessment of a member of an AOP—section 155(2)*", *add,—*

"It may be noted that section 155(2) has been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October 1984."

Page 3190: section 155:

At the end of the paragraphs titled "*Rectification consequent on recomputation of loss or depreciation—section 155(4)*", *add,—*

"In *Anglo Dutch Paint, Colour and Varnish Works P. Ltd. v CIT* [(1986) 157 ITR 614 (Del)], the provisions of section 155(4) of the 1961 Act have been held not applicable to assessment years 1950-51 and 1951-52 governed by the 1922 Act provisions.

It may be noted that section 155(4) has been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), and also by the Finance Act, 1987 (11 of 1987)."

Pages 3192-3193: section 155:

At the end of the paragraphs titled "*Recomputation of distributable income in case of a section 104-company—section 155(7)*", *add,—*

"The starting point of the period of limitation prescribed in section 155(7) has been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984."

Page 3194: section 155:

Before line 10 from the bottom, *add,—*

"The legislature has only used the word 'enhanced' or 'further enhanced'

in section 155(7A). There is no deeming provision or statutory fiction, in that section, that the computation made earlier shall be deemed to have been wrongly made on reduction or further reduction. It cannot be imputed to the legislature that it was not aware of the provision of section 54 of the Land Acquisition Act, 1894, which gives a right to the Government to have the compensation reduced in appeal to the High Court or further reduced in appeal to the Supreme Court. The enhanced compensation would thus accrue only when the court accepts it and the decision becomes final [*Harish Chandra v CIT*, (1985) 154 ITR 478, 490 (Del)].”.

Pages 3194-3195: section 155:

At the end of the paragraphs titled “*Recomputation of capital gains in respect of residential house—section 155(8)*”, add,—

“It may be noted that section 155(8) has further been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984, and by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987.”.

Pages 3195-3196: section 155:

At the end of the paragraphs titled “*Capital gains not chargeable to tax under section 54(2)—rectification for exclusion of—section 155(8A)*”, add,—

“It may be noted that section 155(8A) has further been amended by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987.”.

Page 3196: section 155:

At the end of the paragraph titled “*Capital gains not chargeable to tax under section 54B(1)—rectification for exclusion of—section 155(9)*”, add,—

“It may be noted that section 155(9) has further been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984.”.

Page 3197: section 155:

At the end of the paragraphs titled “*Capital gains not chargeable to tax under section 54D(1)—rectification for exclusion of—section 155(10)(a)*”, add,—

“It may be noted that section 155(10(a)) has further been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984.”.

Page 3198: section 155:

At the end of the paragraphs titled “*Long-term capital gains not chargeable to tax under section 54E(1)—rectification for exclusion of—section 155(10A)*”, add,—

“It may be noted that section 155(10A) has further been amended by

the Taxation Laws (Amendment) Act, 1984 (67 of 1984), and by the Finance Act, 1987 (11 of 1987)."

Page 3198: section 155:

At the end of the paragraphs titled "*Capital gains not chargeable to tax under section 54F(1)—rectification for exclusion of—section 155(10C)*", *add,—*

"It may be noted that section 155(10C) has been amended by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984."

Pages 3198-3199: section 155:

At the end of the paragraphs titled "*Deduction under section 80N not allowed originally—rectification for allowing the same—section 155(11)*", *add,—*

"It may be noted that section 155(11) has been omitted by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1986. The omission is consequential to the omission, by that Act, of section 80N."

Page 3199: section 155:

At the end of the paragraph titled "*Deduction under section 80-O not allowed originally—rectification for allowing the same—section 155(12)*", *add,—*

"It may be noted that section 155(12) has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The omission is consequential to the amendments made, by that Act, in section 80-O."

Page 3201: section 156:

On the subject "*Tax, interest and penalty—different concepts*", reference may also be made to *Chemmeens v ITO*, (1984) 149 ITR 233 (Ker).

Pages 3201-3202: section 156:

On the subject "*Effect of service*", reference may also be made to *Smt. Jijeebai Shinde v CGT*, (1986) 157 ITR 122 (MP) [holding that an order made by an authority under a statutory provision does not become effective and valid until it is served on the party concerned].

Page 3203: section 156:

After line 25 from top, *add,—*

"Defect in notice—effect of.—A demand notice is a process for recovery of tax after assessment proceedings are completed. Therefore, a defective notice cannot vitiate assessment proceedings [*Manilal Raghavji Kothari v CIT*, (1985) 156 ITR 661, 668 (Pat)].

But where a vague notice of demand, which lacks in giving necessary particulars to the assessee, is served on the assessee, such a defect in the notice of demand would render it liable to be quashed and set aside [Cf.

Ganesh Sugar Mills v State of Uttar Pradesh, (1986) Tax LR 1990, 1995 (SC)].”.

Pages 3204-3206: section 156:

On the subject “*Tax reduced in appeal, no fresh notice necessary*”, reference may also be made to *M. N. Jadhav v ITO*, (1986) 161 ITR 275 (Karn) and *Manohar Lal v CIT*, (1987) 34 Taxman 418, 424-425 (All), which have followed *Union of India v Jardine Henderson Ltd.*, (1979) 118 ITR 112 (SC).

Page 3206: section 156:

After line 16 of the paragraph titled “*Tax reduced in appeal or other proceedings—recovery proceeding for the original amount illegal*”, add,—

“In *Gora Chand Porel v Union of India* [(1986) 160 ITR 158 (Cal)], the second demand notice issued after reduction of tax in appeal was considered to be an intimation given as required under section 3(1)(b)(ii) of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964. It was held that the recovery proceedings could be continued in relation to the amount of tax as reduced.”.

Page 3207: section 156:

After line 22 from top, add,—

“A Validating Act seeks to validate the earlier Acts declared illegal and unconstitutional by courts by removing the defect or lacuna which led to the invalidation of the law. With the removal of the defect or lacuna resulting in the validation of any Act held invalid by a competent court, the Act may become valid, if the Validating Act is lawfully enacted. But the question may still arise as to what will be the fate of acts done before the Validating Act curing the defect has been passed. To meet such a situation and to provide that no liability may be imposed on the State in respect of such acts done before the passing of the Validating Act making such Act valid, a Validating Act is usually passed with retrospective effect. The retrospective operation relieves the State of the consequences of acts done prior to the passing of the Validating Act. The retrospective operation of a Validating Act properly passed curing the defects and lacuna which might have led to the invalidity of any act done may be upheld, if considered reasonable and legitimate [*D. Cawasji & Co. v State of Mysore*, (1984) 150 ITR 648, 660-661 (SC)]. In that case, to the extent that the Act imposed the higher levy with retrospective effect and sought to nullify the judgment and order of the High Court, the Act was held to be invalid and unconstitutional.”.

Page 3213: section 157:

After the paragraph titled “*1922 Act*”, add,—

“**Legislative amendment.**—Section 157 has been amended by section 74(c)(ii) of the Finance Act, 1987 (11 of 1987). The amendment is

consequential to the substitution, by that Act, of section 74 of the 1961 Act.”.

Page 3216: new section 158A:

At the beginning of the page, *add*,—

“New section 158A.—A new Chapter XIVA, containing section 158A, relating to procedure when assessee claims identical question of law is pending before High Court or Supreme Court, has been inserted by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984.

The scope and effect of the newly inserted section 158A have been elaborated in the following portion of the departmental circular No. 394, dated 14th September, 1984, as under:—

‘Special provision for avoiding repetitive appeals.—**22.1** When there is a difference between the Income-tax Officer and a taxpayer on any question of law arising in the case of the taxpayer for several years, the taxpayer has to contest the question of law for each of these years. This leads to unnecessary proliferation of appeals before the appellate authorities and reference applications before the High Courts on identical questions of law in the case of the same taxpayer.

22.2 With a view to avoiding such repetitive appeals and reference applications, the Amending Act has inserted a new Chapter XIVA in the Income-tax Act entitled “*Special provision for avoiding repetitive appeals*”. The aforesaid Chapter contains a new section 158A which provides for a special procedure in cases where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Income-tax Officer or any appellate authority (such case being hereafter referred to as “the relevant case”) is identical with the question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal under section 261 (such case being hereafter referred to as “the other case”). In such cases, the assessee may furnish to the Income-tax Officer or the appellate authority, as the case may be, a declaration in the prescribed form and verified in the prescribed manner, that if the Income-tax Officer or, as the case may be, the appellate authority agrees to apply to the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case in appeal before any appellate authority or for a reference before the High Court or the Supreme Court or in appeal before the Supreme Court under the aforesaid sections of the Income-tax Act.

22.3 Where a declaration as aforesaid is furnished to any appellate authority, the appellate authority will have to call for a report from the Income-tax Officer on the correctness of the claim made by the assessee. Where the Income-tax Officer makes a request to the appellate authority

to give him an opportunity of being heard in the matter, the appellate authority will have to allow such opportunity to the Income-tax Officer.

22.4 If the Income-tax Officer or, as the case may be, the appellate authority is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case, the Income-tax Officer or, as the case may be, the appellate authority may admit the claim of the assessee. Where the Income-tax Officer or the appellate authority is not so satisfied, the claim of the assessee shall be rejected. The order admitting or rejecting the claim will have to be made in writing. The order of the Income-tax Officer or the appellate authority admitting or rejecting the claim shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision under the Income-tax Act.

22.5 The fact that the claim made by the assessee is admitted will not, however, preclude the Income-tax Officer or, as the case may be, the appellate authority from making an order disposing of the relevant case without awaiting the final decision on the question of law in the other case. However, when the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Income-tax Officer or, as the case may be, the appellate authority shall, if necessary, amend the order earlier passed by the Income-tax Officer or the appellate authority conformably to the final decision on the question of law in the other case.

22.6 When a claim made by the assessee is admitted, the assessee shall not be entitled to raise, in relation to the relevant case, the question of law in appeal before any appellate authority, or for a reference before the High Court or the Supreme Court or in appeal before the Supreme Court under the aforesaid sections of the Income-tax Act.

22.7 For purposes of new section 158A, the expression "appellate authority" means the Appellate Assistant Commissioner, the Commissioner (Appeals) or the Appellate Tribunal. The expression "case", in relation to an assessee, has been defined to mean any proceeding under the Income-tax Act for the assessment of the total income of the assessee or for the imposition of any penalty on him.

22.8 The aforesaid provisions take effect from 1st October, 1984.'

Relevant rule and form.—Rule 16 of the Income-tax Rules, 1962 [see, page 5473 of Vol. 6] and Form No. 8 appended to those Rules [see, pages 3590-3591 of Vol. 6] are relevant to section 158A.'

Page 3220: section 159:

In line 12 of the paragraph titled "*Scope and object of section 159(1)*", after "79 ITR 1 (SC)", add,—"; *Trustees and Executors of the Late Shri Shanji Kheta v ITO, (1984) 148 ITR 219 (Bom)*" [holding that provisions of section 24B of the 1922 Act do not extend to tax the liability of deceased persons beyond the previous or the account year in which that person died].

Page 3225: section 159:

On the subject "*Continuity of the proceedings*", reference may also be made to *CIT v C. V. Raghava Reddy*, (1984) 148 ITR 385 (AP).

Pages 3225-3226: section 159:

At the end of the paragraphs titled "*Reassessment of deceased's escaped income*", add,—

"In the facts of *Trustees and Executors of the Late Shri Shamji Kheta v ITO* [(1984) 148 ITR 219 (Bom)], it has been held that reassessment of income of the deceased for years prior to the year in which he died could not be made in the hands of the legal representatives under section 24B of the 1922 Act."

Page 3230: section 159:

At the end of the paragraph titled "*A 148-notice in the name of a person known to be dead—reassessment proceedings against legal representative not valid*", add,—

"However, fresh reassessment proceedings can be initiated by issuing a reassessment notice to the legal representative because a proceeding initiated against a dead person had no existence in the eye of law [*CIT v Surendra Kumar Bhadani*, (1987) 164 ITR 323 (Pat)]."

Page 3230: section 159:

On the subject "*Personal liability of the legal representative—section 159(4)*", reference may also be made to *CIT v S. Kumaraswamy Reddiar Sons*, (1985) 154 ITR 724 (Ker).

Pages 3231-3232: section 159:

On the subject "*All the legal representatives must be proceeded with—general rule*", reference may also be made to *K. Ashok Kumar v CIT*, (1986) 162 ITR 543 (Karn).

Page 3235: section 159:

In line 11 of the paragraph titled, "*Under section 271(1)(a)*", after "124 ITR 77 (All)", add,—"; *CWT v Abdul Mazid Khan*, (1984) 147 ITR 53 (MP); *CWT v Rani Sajjan Kumari*, (1985) 155 ITR 438 (Raj)" [holding that penalty under section 18(1)(a) of the Wealth-tax Act, 1957, cannot be imposed on a legal representative]. Also see, *Smt. Kalawati Devi v ITO*, SLP (Civil) No. 7805 of 1980: (1984) 148 ITR (St.) 66 (SC).

Page 3247: section 161:

After line 8 from top, add,—

"A new sub-section (1A) has been inserted in section 161 by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985. The scope and effect of this new section 161(1A) have been elaborated in paragraphs 26.1 to 26.4 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages cxxxii-cxxxiii of Vol. 4."

Page 3253: section 164:

Before line 4 from bottom, *add*,—

“VI. *The Finance Act, 1984*.—The scope and effect of the amendments made in section 164 by the Finance Act, 1984 (21 of 1984), have been elaborated in paragraphs 27.1 to 28.7 of the departmental circular No. 387, dated 6th July, 1984, which have been reproduced at pages cxxxiii-cxxxvi of Vol. 4. Reference in this connection may also be made to discussion at pages cxxxvii-cxxxviii of Vol. 4.”.

Page 3258: section 160:

At the end of the paragraphs titled “*Guardian or a manager of a minor, lunatic or idiot—section 160(1)(ii)*”, *add*,—

“In *CIT v Mrs. Moktar Begum* [(1986) 162 ITR 402 (Cal)], a Muslim, who was a sole proprietor of a business, died leaving behind his widow and minor children. The widow continued the business in the same name and style. It was held that the widow carried on the business on her own and, at best, as the custodian of her minor children. She did not act a guardian of her minor children because unlike the natural guardian of a Hindu minor, a *de facto* guardian has no right to act on behalf of a Muslim minor. In law, she was a representative assessee in relation to her minor children. The widow was in receipt of income of the business on behalf of her minor children to the extent of their shares. She was liable to be assessed as a representative assessee, under section 160(1)(ii), and not in the status of an association of persons.”.

Page 3262: section 160(1)(iv):

After line 28 from top, *add*,—

“The provisions of section 160(1)(iv) are not attracted in respect of a trust created by or on behalf of a minor without obtaining the prior sanction of the civil court because such a trust does not exist in the eye of law [*CIT v T. A. V. Trust*, (1987) 166 ITR 848 (Ker)].

In *Waqf Haji Sheikh Karim Bux v CIT* [(1987) 167 ITR 724 (All)], it has been held that *mutawallis* of a *waqf* could be assessed as trustees.”.

Pages 3262-3263: section 160:

At the end of the paragraph titled “*Whether one trust or two trusts are involved*”, *add*,—

“In *CIT v Trustees of H. E. H. The Nizam's Family Trust* [(1986) 162 ITR 286 (SC)], there was a single trust deed and a single corpus. Specific directions were given for dividing that corpus into several distinct units for separate distinct purposes. It was held, on facts, that under that trust deed a number of separate and distinct trusts were created for specific and distinct purposes. All the several trusts were valid as it is open to a settlor to constitute two or more distinct trusts under a single document. All these trusts were held to be separately assessed.”.

Pages 3263-3265: section 160:

At the end of the paragraphs titled "*Executors and trustees*", add,—

"In the facts of *CIT v K. R. Patel* [(1985) 151 ITR 250 (Bom)], the assessment of the income received by the assessee was upheld in his capacity as an executor and not as a trustee."

Page 3268: section 161:

In line 2 from top, after "130 ITR 479 (Bom)", add,— "; *CIT v Ushaben Trust*, (1984) Taxation 75(3)-106 (Bom)" [holding that income which is once brought to charge in the hands of the beneficiary cannot be again subjected to charge in the hands of the trustees even for rate purpose].

When once an income has been assessed in the hands of the beneficiary, a subsequent assessment of that income in the hands of the representative assessee is not valid [Cf. *CWT v Trustees of the H. E. H. The Nizam-II Supplemental Family Trust*, (1987) 167 ITR 688 (AP)].

Pages 3269-3270: section 161:

On the subject "*Nature and extent of the liability of a representative assessee*", reference may also be made to *CIT v Duduwala & Co.*, (1986) 160 ITR 170 (Raj).

Pages 3270-3271: section 161:

At the end of the paragraphs titled "*Status of the beneficiary to be adopted*", add,—

"A combined reading of sections 160 and 161 of the Income-tax Act, 1961, clearly establishes the position that a representative assessee is to be assessed only under section 161(2) of the Act. The definition of 'representative assessee' in clause (iv) of section 160(1) makes it clear that he could be assessed in respect of the income which is meant for the beneficiary whom he represents. The assessment should be made either in the hands of the representative assessee or directly on the beneficiary but it could only be with regard to the income to which the beneficiary is entitled, and the liability will only be to that extent. There is no option on the Revenue in the case of a representative assessee to assess him personally. If there are more than one representative assessee, they cannot be assessed as an association of persons [*CIT v Karelal Kundanlal Trust*, (1984) 148 ITR 412 (MP)]."

Page 3274: section 161:

At the end of the paragraphs titled "*A trust can carry on business*", add,—

"It may be noted that for and from assessment year 1985-86, the provisions of section 161(1A) are relevant in the context of a business carried on by a private trust. That section has been inserted by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985, and makes provisions for taxation of business profits of private trusts at maximum marginal rate of income-tax."

Page 3275: section 161:

Before line 11 from bottom, *add*,—

“Two trusts constituted even by a single document—single assessment not possible.—The assessment of each one of the trust has to be made separately in the hands of the trustees. Thus, where two trusts are created even by a single document, there must be two assessments and not a single assessment [*CIT v Trustees of H. E. H. The Nizam's Trust*, (1986) 162 ITR 286 (SC); *CIT v Trustees of H. E. H. The Nizam's Wedding Gifts Trusts*, (1985) 154 ITR 573 (AP)].

Business of firm carried on by receivers—basis of assessment.—*Illustrations.*—(1) A suit for dissolution of partnership was compromised and the business of firm was agreed to be carried on by the receivers. On the question of assessability of the income of the firm, it has been held that one assessment had to be made in the status of an association of persons. However, the tax liability had to be to the extent and in the like manner as it would be leviable upon and recoverable from the persons represented by them [*CIT v Duduwala & Co.*, (1986) 160 ITR 170 (Raj)].

(2) A firm, owning a theatre, was dissolved by an order of the High Court in a suit for dissolution of the partnership. During the pendency of the suit, the High Court had appointed a receiver to take charge of the theatre and manage the same. It was held that the assessment had to be made on the receiver on the individual shares of the *quondam* partners [*CIT v M. S. Menon*, (1987) 168 ITR 125 (Mad)].”.

Page 3276: section 161:

After line 17 from top, *add*,—

“Assessment u/s. 161 justified or not.—*Illustrations.*—(1) A trust was found to be created by the major persons and not by the minors. Such a trust was held to be valid and income of the trust from the business carried on by it was held assessable in the hands of the trustees under section 161 [*CIT v V. S. Kumaraswamy Reddiar Trust*, (1982) 138 ITR 808 (Ker)].

(2) A trust was found to be created by or on behalf of minors without obtaining the prior sanction of the civil court. Such a trust was held not to be a valid trust in the eye of law. Therefore, the income of such a trust was held not assessable in the hands of the trustees as representative assessee under section 161 read with section 160(1)(iv) [*CIT v T. A. V. Trust*, (1987) 166 ITR 848 (Ker)].”.

Page 3278: section 163:

After serial No. 5, listing cases where the assessee was held not to be agent of the non-resident as no business connection was found to exist, *add*,—

“6. *Addl. CIT v New Consolidated Gold Fields Ltd.*, (1983) 143 ITR 599 (Pat).

7. *T. I. & M. Sales Ltd. v CIT*, (1985) 151 ITR 286 (Cal),

affirmed in *CIT v T. I. & M. Sales Ltd.*, (1987) 166 ITR 93 (SC).

8. *Prem Nath Diesels Grainvaying Division v CIT*, (1986) 159 ITR 575 (Del). ”.

Pages 3280-3281: section 163:

On the subject “*Appointment for each assessment year essential*”, reference may also be made to *CIT v Alfred Herbert (India) Pr. Ltd.*, (1986) 159 ITR 583 (Cal).

Page 3283: section 163:

After line 8 from top, *add*,—

“An agent as such of a non-resident need not be treated as an agent.—Under section 160(1)(i), not only a person who is treated as an agent under section 163 of a non-resident but also a real agent of the non-resident is regarded as a representative assessee of the non-resident. Section 182 of the Indian Contract Act, 1872, defines an ‘agent’ as a person employed to do any act for another person or to represent another in dealing with third persons. For the appointment of an agent, it is not necessary that there must be written authority. An agent may be appointed orally.

In case of a person who has actually worked as an ‘agent’ of the non-resident, it is not needed that such a person should be treated as an agent after giving an opportunity of being heard as ordained by section 163(2).

In *Shri Hazoor Singh v CIT* [(1986) 160 ITR 746 (Punj)], H purchased a land in the name of a non-resident. He obviously acted as an agent of the non-resident. It was held that H was a representative assessee, under section 160(1)(i), of the non-resident in respect of the income of the accounting year in which he acted as an agent of the non-resident, notwithstanding that he was not treated as an agent of the non-resident after giving opportunity of being heard in that regard as required under section 163(2).”.

Page 3283: section 163:

After the paragraph titled “*Non-resident as well as the agent both can be proceeded with—s. 166*”, *add*,—

“Direct assessment of the non-resident, whether bars assessment or reassessment of the agent?—Where an assessment has been completed on the non-resident directly, it is not permissible thereafter to make an assessment or reassessment in respect of the same income in the hands of the agent after serving a notice upon him for treating him as an agent. The only thing that can be done is to recover the outstanding amount of tax determined to be payable by the non-resident as per section 167 from the assets which had vested in the hands of the agent. Where no property of the non-resident had so vested, no recovery can be made even under section 167 [*Prem Nath Diesels Grainvaying Division v CIT*, (1986) 159 ITR 575 (Del)]. Also see, *CIT v Alfred Herbert (India) Pr. Ltd.*, (1986) 159 ITR 583 (Cal).

At the same time, a non-resident may have several representative assesseees in respect of several heads under which income is derived by him. There can, therefore, be more than one assessment in respect of the income accrued or arisen to a non-resident provided there are more than one representative assessee. Direct assessment on the non-resident in respect of other income would not affect the jurisdiction of the Income-tax Officer to assess the agent of the non-resident on income arising to the non-resident through him [*CIT v Fertilizers & Chemicals (Travancore) Ltd.*, (1987) 166 ITR 823, 833, 834 (Ker)].

Recovery from the non-resident possible even where assessment is made on his agent.—Even where an assessment has been made in the hands of an agent of a non-resident, the recovery of the tax so assessed can be effected against the non-resident himself [Cf. *J. Kurian v Ag ITO*, (1987) 167 ITR 196 (Ker)].”.

Page 3283: section 163:

On the subject “*Agent of a non-resident—representative assessee in respect of what income?*”, reference may also be made to *Addl. CIT v New Consolidated Gold Fields Ltd.*, (1983) 143 ITR 599 (Pat).

In the facts of *Shri Hazoor Singh v CIT* [(1986) 160 ITR 746 (Punj)], the income accruing to the non-resident from undisclosed sources was held covered by the provisions of section 9(1)(i) and was liable to be included in the assessment made on the agent in his representative capacity.

Page 3286: section 163:

At the end of the paragraph titled “*Period of limitation for servicing a notice u/s. 148*”, add,—

“In *Shri Hazoor Singh v CIT* [(1986) 160 ITR 746 (Punj)], the reassessment notice for assessment year 1967-68 was issued on the agent of the non-resident within two years from the end of the relevant assessment year, i.e., before the end of March, 1970. The assessment was completed on 30-3-1974. It was held that the initiation of reassessment proceedings and completion of assessment both were within the period of limitation prescribed in that regard.”.

Pages 3287-3288: section 164:

At the end of the paragraphs titled “*Discretionary trust—meaning of*”, add,—

“A discretionary trust means a trust under which the trustees have absolute discretion to apply the income and capital of the trust as they will. A discretionary trust is one which gives the beneficiary no right to any part of the income of the trust property, but vests in the trustees a discretionary power to pay him, or apply for his benefit, such part of the income as they think fit.

The nature and character of the trust deed have to be determined as a whole by taking the entire provisions of the trust deed and once it is held that it is a discretionary trust and shares of the beneficiaries are not known and determinate, it cannot be decided in a different manner for any particular assessment year [*Moti Trust v CIT*, (1987) 165 ITR 367 (Raj)].”

Pages 3288-3289: section 164:

On the subject “*Fields of operation of section 161(1) and section 164*”, reference may also be made to *Moti Trust v CIT*, (1987) 165 ITR 367, 374 (Raj), special leave petition granted by the Supreme Court: (1985) 157 ITR (St.) 57 (SC)].

Page 3289: section 164:

At the end of the paragraph titled “*Section 164 is of mandatory nature*”, add,—

“Without noticing this mandatory nature of section 164(1), in *Rai Saheb Seth Ghisalal Modi Family Trust v CIT* [(1984) 149 ITR 724 (MP)], the assessments made on beneficiaries, whose shares were indeterminate or unknown, individually by including their respective shares from the trust income were held sufficient to preclude the Income-tax Officer from assessing the trustees, under section 164(1), in respect of the income of the trust.”.

Page 3290: section 164:

Before line 10 from the bottom, add,—

| <i>Assessment year</i> | <i>Maximum marginal rate</i> |
|------------------------|------------------------------|
| “1985-86 | 55+6.875=61.875% |
| 1986-87 | 50+nil=50% |
| 1987-88 | 50+nil=50% |
| 1988-89 | 50+2½=52½%”. |

Page 3290: section 164:

Lines 5 and 6 of the paragraph titled “*Basic exemption not available*”: The basic exemption for assessment years 1982-83 to 1985-86 was Rs. 15,000. For and from assessment year 1986-87, it has been raised to Rs. 18,000.

Page 3292: section 164:

Before line 8 from the bottom, add,—

“Second proviso to section 164(1).—The second proviso to section 164(1) has been inserted by the Finance Act, 1984, with effect from 1st April, 1985.

As a result of the insertion of the second proviso to section 164(1), where the income of a discretionary trust consists of, or includes, profits and gains of business, the entire income of the trust is, for and from

assessment year 1985-86, to be charged to tax at the maximum marginal rate [which is, for assessment year 1985-86, 61.875%, for 1986-87 50%, for 1987-88 50% and for 1988-89 52½%], except in cases where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him. In cases covered by the exception, the income of the discretionary trust is to be charged to tax at normal rates applicable to individuals and not at the maximum marginal rate of income-tax.”.

Pages 3292-3293: section 164:

At the end of the paragraph titled “*Non-exempt income portion of a wholly charitable trust, etc.—section 164(2)*”, *add,—*

“A proviso has been inserted to section 164(2) by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985.

As a result of the insertion of a new proviso to section 164(2), in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 because of the contravention of the provisions of clause (c) or clause (d) of section 13(1) of the 1961 Act, tax is, for and from assessment year 1985-86, to be charged on such income or part thereof, as the case may be, at the maximum marginal rate [which is, for assessment year 1985-86, 61.875%, for 1986-87 50%, for 1987-88 50% and for 1988-89 52½%]. It may be noted that in such circumstances, tax is, upto assessment year 1984-85, to be charged on so much of the income as is not exempt under section 11 or section 12 as if the income not so exempt were the income of an association of persons.”.

Page 3293: section 164:

In line 9 from bottom, for “and 67½% for 1984-85”, read,—, 67½% for 1984-85, 61.875% for 1985-86, 50% for 1986-87 and 1987-88 and 52½% for 1988-89”.

Page 3294: section 164:

After line 16 from top, *add,—*

“The second and third proviso has been inserted to section 164(3) by the Finance Act, 1984 (21 of 1984), with effect from 1st April, 1985.

The new second proviso to section 164(3) carves out an exception to the provisions contained in the first proviso to section 164(3). The first proviso to section 164(3) specifies the cases in which the relevant income derived by a trust in part only for charitable or religious purposes is to be charged to tax as if it were the total income of an association of persons, and not at the maximum marginal rate as laid down in section 164(3). The new second proviso to section 164(3) provides that where the relevant income consists of, or includes, profits and gains of business, the provisions of the first proviso to section 164(3) is, for and from assessment year 1985-86, to apply only if the income is receivable under a trust declared by any

person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

The new third proviso to section 164(3) secures that in a case where the whole or any part of the relevant income derived from property held under trust in part only for charitable purposes which is of the nature of voluntary contributions received by the trust or which is of the nature of profits or gains of business referred to in section 11(4A) of the 1961 Act is, for and from assessment year 1985-86, to be charged to tax at the maximum marginal rate [which, for the assessment year 1985-86, is 61.875%, for 1986-87 50%, for 1987-88 50%, for 1988-89 52½%] in cases where the trust forfeits exemption for contravention of the provisions contained in clause (c) or clause (d) of section 13(1) of the 1961 Act, and not as if such income were the total income of an association of persons.”.

Pages 3301-3302: section 164:

On the subject “*Determination of the nature of beneficiaries’ share, whether to be from year to year?*”, reference may also be made to *CIT v Kerala State Transport Corporation General Provident Fund Trust*, (1986) 161 ITR 681 (Ker); *CIT v The Trustees of Staff Gratuity Fund of Shree Ram Mills Ltd.*, (1986) 162 ITR 471 (Bom); *Moti Trust v CIT*, (1987) 165 ITR 367 (Raj).

Pages 3302-3303: section 164:

At the end of the paragraph titled “*Supplementary deed—effect of*”, add,—

“In *CIT v Trustees of H. E. H. The Nizam’s Miscellaneous Trust* [(1986) 160 ITR 270 (AP)], the paramount intention of the settlor was to see that his family members and his dependants were fed out of the income of the trust. It was found as a fact that after the death of the settlor, it had become impracticable to run the palace kitchen. It was held that in those circumstances, it was within the scope of section 11 of the Indian Trusts Act, 1882, for the trustees to modify the directions of the settlor with the consent of the beneficiaries.

Rectification deed—effect of.—A rectification deed, removing the infirmity in the original trust deed, executed during the previous year concerned can be looked into for the purpose of ascertaining the true and real nature of the original trust deed.

But, a rectification deed executed after the end of the relevant previous year cannot be taken help of for that previous year or any earlier previous year [*Pramod Chand Soni Trust v CIT*, (1984) 148 ITR 573 (MP); *Pramod Chand Soni Trust v CWT*, (1984) 148 ITR 617 (MP)].”.

Page 3303: section 164:

At the end of the paragraphs titled “*Creation of trust—by whom possible*”, add,—

"In *Rai Saheb Seth Ghisalal Modi Family Trust v CIT* [(1984) 149 ITR 724 (MP)], the settlor settled on trust the property which he succeeded, on the death of his father, under section 8 of the Hindu Succession Act, 1956. It was held that the property so succeeded to was individual property of the settlor and the trust was validly created.

But, in *CIT v Seematti Trust* [(1985) 154 ITR 771 (Ker), special leave petition granted by the Supreme Court: (1986) 161 ITR (St.) 133 (SC)], creation of a trust by a person in respect of another's property without any power in that regard, was held not valid.

Who may create a trust.—See, at page 5990, *ante*.

Trust for the benefit of would-be wife.—See, at page 5991, *ante*."

Page 3307: section 164:

After serial No. (8), discussing illustrative cases where shares of the beneficiaries were held to be determinative not attracting the provisions of section 164(1), *add*,—

"(9) The beneficiaries were known and the amount payable was also specified. It was held that section 164(1) could not be attracted and section 161 was the proper one for assessment of the trustees. In such assessment, the cash payments made to certain beneficiaries were held not includible [*CIT v Trustees of H. E. H. The Nizam's Miscellaneous Trust*, (1986) 160 ITR 270 (AP)]. Also see, *CIT v Trustees of H. E. H. The Nizam's Miscellaneous Trust*, (1986) 160 ITR 253 (AP).

(10) The interest from Government securities was received on behalf of and for the benefit of the employees of the trust who contributed part of their salary towards the provident fund. The individuals who contributed to the provident fund account and share of interest due to them were determined at the end of each year. The trust was to work out the balance standing to the credit of each member and adjust the interest thereon towards his account. It was held that no income was received by the assessee-trust so as to attract the provisions of section 164 [*CIT v Kerala State Transport Corporation General Provident Fund Trust*, (1986) 161 ITR 681 (Ker)]. Also see, *CIT v K.S.R.T.C. Pension & Gratuity Fund Trust*, (1987) 167 ITR 383 (Ker).

(11) Under a trust deed, the trustees were required to pay gratuity to wholetime *bona fide* employees of certain mills and others mentioned in the deed of trust. Employees who had been dismissed for dishonesty or misconduct were not entitled to claim gratuity. It was held that it could not be said that the body of the beneficiaries was indeterminate and fluctuating. On the last day of each accounting year, employees eligible to gratuity and their share were determinable. Therefore, the assessee-trust was assessable, as a representative assessee, under section 161 and not section 164 [*CIT v The Trustees of Staff Gratuity Fund of Shree Ram Mills Ltd.*, (1986) 162 ITR 471 (Bom)]. *Contra*: on its own facts, *Moti Trust v CIT*, (1987) 165 ITR 367 (Raj).

Also see, *Waqf Haji Sheikh Karim Bux v CIT*, (1987) 167 ITR 724 (All).”.

Page 3310: section 164:

After serial No. (10), discussing illustrative cases where the shares of beneficiaries were held to be indeterminate or unknown and, therefore, the provisions of section 164(1) were attracted, *add*,—

“(11) Under a trust deed, the property was directed to be equally distributed amongst the beneficiaries. The trustees were authorised to spend so much out of the income of the trust as was necessary for meeting the requirements of the beneficiaries and for their overall advancement only. It was held that the shares of the beneficiaries in the income of the trust was not determinate. Therefore, the provisions of section 164(1) were attracted. In order to attract the provisions of section 164(1), the shares of the beneficiaries in the corpus of the trust is not relevant. What has to be seen is whether their shares in the income of the trust are determinate [*Rai Saheb Seth Ghisalal Modi Family Trust v CIT*, (1984) 149 ITR 724 (MP)].

(12) The *wakf* deed did not provide for the shares of the beneficiaries. It was held, on facts, that the assessment of the *mutawalli* made, for the assessment year 1965-66, in the status of an association of persons was valid [*Syed Shah Sarfe Alam Mutawalli v CIT*, (1984) 150 ITR 174 (Pat)].

(13) As per the terms of the trust deed, the immediate beneficiaries were not entitled to the sale proceeds, which was the corpus realised from the sale of the jewellery, which gave rise to capital gains. The beneficiaries were entitled only to the interest out of it during their lifetime. It was held that as the trustees did not receive the sale proceeds of the jewellery on behalf of the beneficiaries, the trustees were liable to be assessed under section 164(1) [*CIT v Trustees of H. E. H. The Nizam's Wedding Gifts Trusts*, (1985) 154 ITR 573 (AP)].”.

Page 3312: section 162:

After the Central heading “*Other provisions*”, *add*,—

“**Right of representative assessee to recover tax paid—section 162.**—As has been seen in the last paragraph at page 3254 of Vol. 3, section 162 lays down certain safeguards for the representative assessee. In as much as a representative assessee can have recourse to section 162 which confers on him the right to get reimbursement of the tax paid by him as also a right to get a ‘certificate from the Income-tax Officer for retention’, it cannot be said that he is aggrieved by the assessment made upon him in accordance with the provisions contained in Chapter XV, containing, *inter alia*, sections 160 to 167 [*CIT v Fertilizers & Chemicals (Travancore) Ltd.*, (1987) 166 ITR 823 (Ker)].”.

Pages 3313-3314: section 166:

On the subject "*Amounts received by a beneficiary under a discretionary trust are not assessable directly in the hands of the beneficiary*", reference may also be made to *CIT v Gautam Sarabhai*, (1984) Taxation 75(3)-152 (Guj), which has followed *CIT v Smt. Kamalini Khatau*, (1978) 112 ITR 652 (Guj—FB).

Page 3321: section 167A:

After line 5 from top, *add*,—

"That state of law remained operative for assessment years 1981-82 to 1984-85.

Section 167A substituted w.e.f. 1-4-1985.—A new section 167A has been substituted for the then existing section 167A by the Finance Act, 1985 (32 of 1985), with effect from 1st April, 1985.

The scope and effect of the newly substituted section 167A have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Modification of the provisions relating to taxation of associations of persons where shares of members are indeterminate or unknown.—38.1 Section 167A(2) of the Income-tax Act provides that where the individual shares of the members of an association of persons in any part of the income of such association are indeterminate or unknown, the income-tax payable shall be the aggregate of the amount of income-tax on such part of the total income at the maximum marginal rate and the amount of income-tax which would have been chargeable if the remaining part of the total income were its total income.

38.2 The existing provisions are being misused by some taxpayers for tax avoidance. A large number of associations of persons are formed without specifying the shares of members in a small part of the income, with the result that such part gets taxed at the maximum marginal rate while the major portion of the income gets taxed at low rates of tax depending upon the size of the income. With a view to countering tax avoidance through this method, the Finance Act, 1985, has amended section 167A to secure that, where the individual shares of the members of an association of persons in the whole or any part of the income of such association are indeterminate or unknown, income-tax will be charged on the whole of the total income of the association at the maximum marginal rate.

38.3 The amendment takes effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.'".

Page 3323: section 168:

After line 19 from top, *add*,—

"In *CIT v K. R. Patel* [(1985) 151 ITR 250 (Bom)], under a will, the

executors and trustees were directed to convert all properties other than those which were bequeathed to specific legatees into cash and use for charitable purposes. Substantial portion of such properties was not converted into cash during the relevant accounting year. It was held that the assessment of the income of that accounting year was to be assessed in the capacity of executors under section 168 and not in the capacity of trustees.”.

Pages 3325-3326: section 168:

At the end of the paragraphs titled “*When residuary estate can be deemed to have been ascertained*”, add,—

“In *CIT v Mrs. A. Ghosh* [(1986) 159 ITR 124 (Cal)], the assessee was the sole executrix and sole residuary legatee under the last will of her husband. The income from the estate of the deceased husband was deposited in the personal account of the assessee. It was found that estate duty in respect of the estate remained unpaid and the estate, therefore, had not been fully administered. It was held, on facts, that the extent of residuary legatee could not be ascertained and no part of the income from the estate could be distributed to the residuary legatee. In that view of the matter, the income so deposited is liable to be taxed in the hands of the executrix, and not in the hands of the assessee by virtue of the provisions of section 168(4) which are applicable in case of a specific legatee and not a residuary legatee.”.

Pages 3326-3327: section 168:

On the subject “*Separate assessments for each year or part thereof possible, but not with reference to the respective shares of each of the beneficiaries*”, reference may also be made to *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 791 (Karn); *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 787 (Karn); *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 792 (Karn).

Page 3329: section 168:

At the end of the paragraph titled “*Payments to beneficiaries*”, add,—

“Section 168(4) provides for deduction of amounts paid by the executor to a specific legatee but not to a residuary legatee [*CIT v Mrs. A. Ghosh*, (1986) 159 ITR 124 (Cal). Cf. *CWT v S. M. Bhandari*, (1987) 167 ITR 643 (AP)].”.

Page 3331: section 170:

In the last line of column 1 as also of column 2, add,— “Reference in this connection may be made to *CIT v Ettumanoor Motors Pr. Ltd.*, (1987) 165 ITR 751 (Ker), which discussed difference between the provisions of section 26(2) of the 1922 Act and those of section 170(3) of the 1961 Act.”.

Page 3333: section 170:

At the end of the footnote marked *, *add*,— “Also see, *Badri Prasad Jagan Prasad v CIT*, (1985) 156 ITR 430 (SC), reversing *Badri Prasad Jagan Prasad v CIT*, (1973) 87 ITR 678 (All), which has dealt with the provisions of section 25(4) of the 1922 Act.”.

Page 3337: section 170:

After line 7 from top, *add*,—

“Section 170(1)(b) authorises the assessment in the hands of the successor-assessee in respect of the income of the previous year after the date of succession [*CIT v Gunturu Kannabhai & Co.*, (1986) 158 ITR 353, 363 (AP)]. In that case, the matter was remanded to the Tribunal for the purpose of examining and determining whether the whole or any part of a particular sum represented income of the previous year after the date of succession.”.

Page 3338: section 170:

On the subject “*When the tax cannot be recovered from the predecessor—section 170(3)*”, reference may also be made to *CIT v Ettumanoor Motors Pr. Ltd.*, (1987) 165 ITR 751 (Ker). Cf. *Deputy Tahsildar v Smt. Velammal*, (1981) 127 ITR 587 (Ker).

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Page 3350: section 171:

Before the paragraph titled “*Hindu undivided family*”, *add*,—

“Section 171 is not ultra vires.—Section 171 which treats all Hindu undivided families that were previously assessed to tax but are partitioned alike, does not offend the principles of permissible classification and is not arbitrary and does not infringe Article 14 of the Constitution [*Ugarmal Nemichand v ITO*, (1987) 163 ITR 630, 632 (Karn)].”.

Page 3354: section 171:

At the end of the page, *add*,—

“The provisions of the said *Explanation (a)(i)* at the end of section 171 have been considered in *CIT v Laxmi Dyeing & Finishing Factory* [(1987) 164 ITR 789 (Punj)] holding that even for effecting a valid partial partition of a property admitting physical division, the mere division of the income without physical division of the property producing income is not sufficient.

But, in *CIT v Roopchand Mannalal* [(1987) 30 Taxman 610 (MP)], certain amounts representing income from certain immovable property belonging to the assessee-HUF were deposited by the assessee-HUF in the books of a firm. These amounts were distributed amongst the members of the assessee-HUF and a partial partition was claimed with reference to

these amounts. The claim for partition was negated by the Income-tax Officer on the ground that the assessee-HUF divided income without physical division of the immovable property producing the income. The Tribunal, accepting the claim of the assessee-HUF, took the view that the amounts of income became capital assets of the assessee-HUF on their having been deposited in the firm and the division by the members of the assessee-HUF of such capital assets effected a valid partial partition, within the meaning of *Explanation (b)* at the end of section 171. In such a case, the provisions of *Explanation (a)(i)* are not at all attracted.”.

Pages 3356-3357: section 171:

At the end of the paragraphs titled “*Single coparcener family not amenable to partition*”, add,—

In *Sat Pal Bansal v CIT* [(1986) 162 ITR 582 (Punj—FB)], it has been held that no partition, partial or otherwise, is possible in the case of a Hindu undivided family consisting of one male member or the sole coparcener. In that view of the matter, a *Karta*, who is the sole surviving coparcener of a Hindu undivided family, cannot effect partition of the family property between himself and his wife. The Full Bench has overruled the decision in *CIT v Narain Dass Wadhwa* [(1980) 123 ITR 281 (Punj)], which have been discussed in first 8 lines of page 3357 of Vol. 4.

The Full Bench has noted that in *Ram Narain Paliwal v CIT* [(1986) 162 ITR 539 (Punj)], when the partial partition was effected, the Hindu undivided family consisted of R, his mother, the wife, four minor sons and one daughter. There being more than one coparcener or male member of the Hindu undivided family, partial partition could validly be effected by the *Karta*. The observation [at page 542] by the Division Bench to the extent that the *Karta* would not be debarred from effecting partition even if he is the sole surviving coparcener or male member has been overruled by the Full Bench.”.

Page 3361: section 171:

After line 21 from top, add,—

“In *Tulsidas Kundanmal v CIT* [(1987) 163 ITR 810 (MP)], a Hindu undivided family consisted of the *Karta* K, his wife, one major son and five minor sons. There was effected a partial partition in the family by which the *Karta* K was separated from the family. The wife of the *Karta* remained with her sons instead of her husband. It was held that the partial partition so effected was valid one.”.

Page 3364: section 171:

After line 17 from top, add,—

“Without noticing the earlier decision in *Sankaranarayanan's case* [(1984) Tax LR 745 (Ker)=(1985) 153 ITR 745 (Ker)], judgment dated 14th March, 1984], in a later decision in *Sreepadam v CWT* [(1985) 155 ITR 318 (Ker), judgment dated 29th June, 1984], it has been held that by the

force of the said Kerala Act 30 of 1976, there will be no joint Hindu family in the State of Kerala with effect from 1st December, 1976. Therefore, there could be no entity assessable as HUF either for the purpose of the 1961 Act or for the purpose of the Wealth-tax Act, 1957. In that view of the matter, reassessment notices issued under section 17 of the Wealth-tax Act against the assessee-HUF were quashed.”.

Pages 3364-3365: section 171:

On the subject “*Partition document—whether registration essential?*”, reference may also be made to *Bhaggal v Rangi Lal*, AIR 1986 All 163 [holding that as the deed in that case did not create any title in favour of any person but merely recorded in the partition list what had already happened and so it was not compulsorily registrable. It was also pointed out that there is a distinction between a mere recital of a fact and something which in itself creates a title].

Pages 3367-3368: section 171:

At the end of the paragraphs titled “*Effect of recording a partial partition*”, add,—

“In *CIT v Jagdish Lal & Sons* [(1986) 157 ITR 620 (All)], there was effected a partial partition of the HUF-interest in a firm. The same was accepted by the income-tax authorities for a particular year. It was held the share income from the firm could not be assessed as income of the Hindu undivided family for subsequent years. Also see, *CIT v Virendra Kumar Gupta*, (1987) 65 CTR (All) 87.”.

Pages 3371-3372: section 171:

On the subject “*Scheme of section 171*”, reference may also be made to *Ambika Prasad Sonar v CIT*, (1987) 168 ITR 444 (All), holding that in order that sub-section (1) of section 171 may apply, all that is necessary is that there is a family, which prior to the relevant claim for partition, has been assessed to tax as ‘HUF’. The fact that the family has been so taxed prior to the relevant assessment year is sufficient to bring that family within the expression ‘hitherto assessed as undivided family’. It is not a further condition of section 171(1) that the family must continuously be so assessed without any break in respect of its income or must have been so assessed till the immediately preceding year in which the claim for partition is made under section 171(2). Such a requirement is not warranted from the language of the aforesaid provisions.

Section 171(3) says that on completion of the enquiry, the Income-tax Officer shall record a finding as to whether there has been a total or partial partition of the family property and if there has been such a partition, the date on which it has taken place. When an order has been made recording the partition, the assessment of the total income received on behalf of the joint family as such will, up to the date of partition, be made in accordance with the provisions of sub-section (4)(a) and sub-section (5) of section

171. These provisions provide for an assessment in the hands of the family ignoring the partition in the family and the determination of the tax payable by the joint family as such ignoring the partition, as if no partition had taken place and the family were still in existence. Section 171(4)(b), in such a situation provides a machinery for the recovery of taxes from each of the members or group of members which liability is joint and several for whole of the amount of tax determined on the joint family. In nutshell, it may be said that unless the partition is recognised, by the Income-tax Officer by passing an order under section 171(3), the family continues to be joint under section 171(1) for the purposes of the 1961 Act and is liable to tax on its income irrespective of partition in the family [168 ITR 448-449].

Pages 3372-3373: section 171:

On the subject "*Extent of the legal fiction of section 171(1)*", reference may also be made to *Addl. CIT v P. Durgamma*, (1987) 166 ITR 776 (AP).

Page 3374: section 171:

On the subject "*Section 171 has no application if the family has not been assessed as HUF*", reference may also be made to *Addl. CIT v P. Durgamma*, (1987) 166 ITR 776 (AP).

Page 3382: section 171:

Lines 5 and 4 from bottom: The decision in *CIT v Narain Dass Wadhwa* [(1980) 123 ITR 281 (Punj)] has been overruled in *Sat Pal Bansal v CIT* [(1986) 162 ITR 582 (Punj—FB)] on the point of amenability of a family having a single coparcener to a partition.

Page 3387: section 171:

After line 9 from top, *add*,—

"On the point of 'family arrangement', the decision of the Supreme Court in *Kale v Dy. Director of Consolidation* [AIR 1976 SC 807] has been followed in *CIT v R. Ponnammal* [(1987) 164 ITR 706 (Mad)].

In *Fatima Sarohini Suresh v K. Saraswathi Amma* [AIR 1986 Ker. 86], a clause in a family settlement restraining alienation of property has been held to be void."

Page 3388: section 171:

On the subject "*Family disrupts on institution of a suit for partition and not after partition by metes and bounds*", reference may also be made to *Addl. CIT v P. Durgamma*, (1987) 166 ITR 776 (AP).

Pages 3388-3389: section 171:

At the end of the paragraphs titled "*Where at the time of making an assessment—section 171(2)*", *add*,—

"A claim for partition can also be made in the course of reassessment proceedings as an 'assessment' includes a 'reassessment' as per section 2(8) [Cf. *M. R. Thammaiah v Ag. ITO*, (1984) 150 ITR 403 (Karn)].".

Page 3392: section 171:

At the end of the paragraphs titled "*Family business*" in the context of "*Modes of partition*", add,—

"In *CIT v Laxmi Dyeing & Finishing Factory* [(1987) 164. ITR 789 (Punj)], there was purported to be effected a partial partition in the Hindu undivided family by dividing equally amongst the four members of the family the right to share the profits of the family business without dividing the capital assets, which were the income-producing properties. It was held that in view of the provisions of the *Explanation (a) (i)* at the end of section 171 [which makes it clear that where the property admits of physical division, the mere division of the income without physical division of the property producing the income, shall not be deemed to be a partition], the arrangement could not be deemed to be a partial partition."

Page 3399: section 171:

After line 11 from top, add,—

"In *Shriram Dagdual v CIT* [(1986) 161 ITR 42 (Bom)], the penalty levied under section 28 of the 1922 Act against the Hindu undivided family was held to be justified because there was nothing to show that there was any order passed under section 25A recording any partition, as claimed by the assessee-HUF, nor was there anything to show that there was any application made in that behalf. Therefore, under section 25A(3), the Hindu undivided family was presumed to be joint when the order of penalty was passed."

Page 3400: section 171:

On the subject "*Res judicata applicable to a section 171(3) order*", reference may also be made to *CIT v Jagdish Lal & Sons*, (1986) 157 ITR 620 (All).

Page 3401: section 171:

On the subject "*Order appealable*", reference may also be made to *CIT v Malchand Malviya*, (1987) Taxation 84(3)-14 (MP).

Page 3438: section 178:

At the end of line 12 from bottom, add,— "*Similarly, in TRO v Punjab & Sind Bank* [(1986) 161 ITR 220 (Del)], the respondent bank, a secured creditor, filed a suit to recover its dues against the property mortgaged to it. The income-tax department (not a secured creditor) made attempts to sell that property for realisation of income-tax dues. The income-tax department was not a party in that suit. The trial court, on an application by the bank, granted an injunction against the department. It was held that the trial court was justified in granting injunction even against a person who was not a party to the suit."

Page 3440: section 178:

Paragraph titled "*Assets with the executing court, point of time upto which priority claim may be made*": The decision in '*Somasundaram Mills Pr. Ltd. v Union of India* [(1969) 74 ITR 668 (Mad)] has been reversed in *Union of India v Somasundaram Mills Pr. Ltd.* [(1985) 152 ITR 420 (SC)].

Page 3440: section 178:

Before line 10 from bottom, *add*,—

"Claim for priority for Government dues—how can be effected?—It is a general principle of law that debts due to the State are entitled to priority over all other debts. If a decree-holder brings a judgment-debtor's property to sale and the sale proceeds are lying in deposit in court, the State may, even without prior attachment, exercise its right to priority by making an application to the executing court for payment out. If, however, the State does not choose to apply to the court for payment of its dues from the amount lying in deposit in the court but allows the amount to be taken away by some other attaching decree-holder, the State cannot thereafter make an application for payment of its dues from the sale proceeds, since there is no amount left with the court to be paid to the State. However, if the State had already effected an attachment of the property, the prior attachment effected by the State fastens itself to the sale proceeds taken away by a decree-holder who sells the property subsequently, and the State would be entitled, by filing a suit, to recover the sale proceeds from the decree-holder who has received the amount from the court [*Union of India v Somasundaram Mills Pr. Ltd.*, (1985) 152 ITR 420, 422 (SC)]. Also see, *S. Aiyadurai Nadar v T.R. Sakku Bai*, (1987) 168 ITR 161 (Mad)."

Page 3456: new section 180A:

After line 19 from top, *add*,—

"New section 180A.—A new section 180A, relating to amortisation of consideration of know-how in certain cases, has been inserted by the Finance Act, 1985, with effect from 1st April, 1986.

The scope and effect of the new section 180A have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Provision for concessional taxation of consideration for know-how.—

39.1 With a view to encouraging the development of indigenous know-how, the Finance Act, 1985, has made a special provision for taxation of lump sum consideration received or receivable for know-how.

39.2 The new section provides that where the time taken by an individual who is resident in India for developing any know-how is more than twelve months, he may elect that the gross amount of the lump sum consideration received or receivable by him during the previous year for allowing the use of such know-how, be spread equally over three years,

namely, the year in which such amount is received or is receivable and the two immediately preceding years and charged to tax accordingly. On his exercising such an option, the assessments for the two preceding years, if already made, would be rectified under section 154 of the Income-tax Act and, for this purpose, the period of four years specified in sub-section (7) of section 154 for rectifying the assessment order shall be reckoned from the end of the financial year in which the assessment relating to the previous year in which the lump sum consideration is received or receivable by such individual is made.

39.3 For the purposes of this section, the expression "know-how" has the meaning assigned to it in new section 35AB inserted in the Income-tax Act by section 8 of the Finance Act, 1985.

39.4 The new section will apply in relation to the assessment year 1986-87 and subsequent years.'".

Pages 3464-3465: section 182:

At the end of the paragraph titled "*Assessment of registered firm and its partners*", *add,—*

"In the facts of *Addl. CIT v Manaklal Porwal* [(1986) 26 Taxman 766 (Raj)], the assessee-partner was held liable to be assessed for his 1/4th share in the income of the firm as the firm was found to be a genuine one entitled to registration in *CIT v Manaklal Porwal* [(1986) 160 ITR 243 (Raj)].".

Page 3473: sections 182-183:

At the end of the paragraphs titled "*Rates of tax applicable in case of 'professional firms'*", *add,—*

"The rates of tax for the assessment years 1986-87 to 1988-89 are the same as those for the assessment year 1985-86.".

Page 3474: sections 182-183:

At the end of the paragraphs titled "*Rates of tax applicable in the case of 'business firms'*", *add,—*

"The rates of tax for the assessment years 1986-87 to 1988-89 are the same as those for the assessment year 1985-86.".

Page 3474: sections 182-183:

At the end of line 6 from bottom, *add,—*

"For assessment years 1986-87 and 1987-88, there is no surcharge. But, for assessment year 1988-89, the rate of surcharge is 5% where the total income exceeds Rs. 50,000.".

Page 3475: sections 182-183:

Rates of tax on unregistered firms are as under:—

| <i>Total income</i> | <i>Asst. year 1986-87</i> | <i>Asst. year 1987-88</i> | <i>Asst. year 1988-89</i> |
|-------------------------|-------------------------------|-------------------------------|-------------------------------|
| On the first Rs. 18,000 | <i>Nil</i> | <i>Nil</i> | <i>Nil</i> |
| On the next Rs. 7,000 | 25% | 25% | 25% |
| On the next Rs. 25,000 | 30% | 30% | 30% |
| On the next Rs. 50,000 | 40% | 40% | 40% |
| On the balance | 50% | 50% | 50% |

Page 3476: section 182-183:

At the end of line 15 of the paragraph titled "*Exemption limit and marginal relief*", add,—“For and from assessment year 1986-87, the exemption limit has been raised to Rs. 18,000.”

Page 3478: sections 182-183:

At the end of line 15 from top, add,—“There is no surcharge levied for the assessment years 1986-87 and 1987-88. For assessment year 1988-89, the surcharge has been levied at the rate of 5% where the total income exceeds Rs. 50,000.”

Page 3478: section 182:

At the end of the paragraph titled "*Registered firm's liability to tax on capital gains up to assessment year 1967-68*", add,—

“According to the Calcutta High Court, in *H. S. Mukherjee v CIT* [(1986) 161 ITR 846 (Cal)], when tax on capital gains had already been charged in the hands of a registered firm, the partners of the firm are also assessable to tax in respect of their share of capital gains of the firm under the then section 114. In taking that view the view taken by the Punjab and Haryana High Court in *Pearl Woollen Mills v CIT* [(1980) 123 ITR 658 (Punj)] has been dissented from. .

Page 3482: sections 184-185:

In lines 6-7 of sub-paragraph (d) of the paragraph titled "*1922 Act*", add,—“; *Addl. CIT v Sunder Lal Banwari Lal*, (1985) 156 ITR 617 (Del); *CIT v Amar Singh Gowamal & Sons*, (1986) 161 ITR 417 (SC)” [pointing out the changes made in the 1961 Act from the 1922 Act with regard to procedure for renewal of registration from year to year].

Page 3487: sections 184-185:

At the end of the paragraphs titled "*Registration possible only in accordance with the statute*", add,—

“In order to avail the benefit of registration, the assessee should proceed in strict conformity with the relevant provisions of the Act and the Rules [*Udaipur Soap Factory v CIT*, (1987) 167 ITR 613, 622 (Raj)].”

Page 3488: sections 184-185:

On the subject "*Essential conditions of a valid partnership*", reference may also be made to *CIT v Mittal Engineering Co.*, (1987) 163 ITR 415 (Punj); *CIT v Ravi Constructions*, (1987) Tax LR 907, 911 (AP).

Pages 3488-3489: sections 184-185:

On the subject "*Co-ownership and partnership—distinction*", reference may also be made to *CIT v B. Ramanujam Thampi*, (1987) 167 ITR 831 (Ker).

Page 3492: sections 184-185:

After serial No. 10, discussing illustrative cases where the activities of the assessee were held to constitute business, *add,—*

- "11. Taking coal mine on lease and giving the same on lease to an agent was held to be user of the commercial asset by the assessee-firm and income derived by the firm was held assessable as business income [*CIT v Pure Dhansar Coal Co.*, (1985) 154 ITR 857 (Pat)].
12. Assessee letting out its cinema theatre for a temporary period without intention to stop carrying on of the business—income was held to be business income [*CIT v Sri Venkateswara Talkies*, (1985) 155 ITR 73 (AP)].
13. Activity of leasing out the business of the assessee has been held to constitute 'business' for the purposes of the Partnership Act, 1932, even though the income from such leasing out was assessed as 'Income from other sources' [*CIT v Narang Dairy Products*, (1986) 159 ITR 243 (All)].
14. Leasing out of plant, factory, etc [*CIT v K. Ramaiah, K. Ramakrishna Murthy*, (1986) 159 ITR 929 (AP)].
15. Temporary transfer of business was held not amounting to cessation of business [*CIT v Jacobs*, (1986) 160 ITR 570 (Ker)].
16. Leasing out of the business run by the assessee [*CIT v Laxmi Rice Mills*, (1987) 164 ITR 571 (MP)].
17. Activity of letting out of factory building [*Prem Trading Co. v CIT*, (1987) 166 ITR 211 (MP)].
18. Assessee-firm rendering certain services to the transferee to whom assessee's business was transferred—held, firm continued to do business [*CIT v Dadha Co.*, (1987) 166 ITR 656 (Ker)].

But, where it was found that the entire business of the colliery of the assessee was leased out, it was held that the assessee could not be said to carry on business [*CIT v Kuya and Khas Kuya Colliery Co.*, (1985) 156 ITR 206 (Pat), special leave petition granted by the Supreme Court: (1985) 156 ITR (St.) 159 (SC)].

Also, in *CIT v Phabiomal & Sons* [(1986) 158 ITR 773 (AP)], it has been held that the activities of letting out building and collecting rents do not amount to carrying on of business.

In *CIT v Model Jharia Colliery Co* [(1987) 163 ITR 565 (Pat)], the lease deed was not annexed to the statement of case. The matter was remanded to the Tribunal with a direction to consider clauses of the lease deed and come to a definite finding whether the assessee was carrying on business or not.”.

Page 3494: sections 184-185:

After line 15 of the paragraph titled “*Real partnership must come into existence*”, add,—

“*Explanation 1* to section 6 of the Partnership Act, 1932, illustrates the said rule by saying that mere sharing of profits or gross returns arising from property by persons holding a joint or common interest in that property does not by itself make such persons partners. *Explanation 2* in particular says that the receipt by a person of a share of the profits of a business does not by itself make him a partner, and that, in particular, the receipt of such share or payment by a previous owner or part owner of a business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business [*CIT v Ravi Constructions*, (1987) Tax LR 907, 911 (Ker)]. In that case, it was held, on facts, that there came into existence no partnership”.

Page 3495: sections 184-185:

On the subject “*Essential conditions for registration*” in the context of the 1922 Act provisions, reference may also be made to *Ratanchand Darbarilal v CIT*, (1985) 155 ITR 720, 728 (SC).

Page 3496: sections 184-185:

On the subject of “*Essential conditions for registration*”, in the context of the 1961 Act provisions, in line 10 from top, after “120 ITR 279, 284 (Punj)”, add,—“; *Addl. CIT v Rahmat Khan Faizukhan*, (1985) 152 ITR 676, 680 (Raj); *CIT v Gulab Das*, (1986) 159 ITR 24, 27 (Raj)”.

Page 3496: sections 184-185:

Lines 15 and 14 from bottom: The decision in *Jupiter Foundry & Machine (Knives) v CIT* [(1977) 109 ITR 92 (Punj)] has been followed in *CIT v Chandigarh Bottling Co* [(1986) 160 ITR 780 (Punj)], where it has been held that it cannot be contended that a firm is entitled to registration because one of its partners had already been assessed in respect of his share income from that firm.

Page 3496: sections 184-185:

Lines 7 and 6 from the bottom: The decision in *CIT v V. H. Sheth* [(1984) 148 ITR 169 (Bom)] has been followed in *Narnauli Jewel Corporation v CIT* [(1987) 163 ITR 293 (Raj)], where it has been held that once the partners of a firm has been assessed individually, the firm’s income cannot be assessed treating the firm as an association of persons.

Page 3499: sections 184-185:

After line 4 from top, *add*,—

“Instrument of partnership need not be in a specific form.—In *CIT v M. V. Krishnaiah* [(1986) 157 ITR 257 (AP)], it was specifically provided in the partnership deed that on the death of one of the partners of the firm, the firm would not be dissolved and the legal representative(s) would become partner(s). One of the partners of the firm died. Entries were made in the day book of the firm stating that the capital in the name of the deceased partner was divided equally amongst his three daughters and stood credited to their names. The surviving partners and the three daughters of the deceased partner signed the day book. It was held, on facts, that as there is no statutory requirement as to the form of the partnership deed, the Tribunal was right in treating the entries in the day book coupled with the original deed of partnership as an instrument of partnership of the reconstituted firm.”.

Page 3499: sections 184-185:

At the end of the paragraph titled “*No condonation possible of delay in executing a deed of partnership*”, *add*,—

“However, the above view to the effect that the partnership should have been evidenced by a deed of partnership executed before the end of the previous year concerned has been **dissented from** by the Calcutta High Court in *Joshi & Co. v CIT* [(1986) 162 ITR 268 (Cal)]. In the Calcutta case, the original partnership deed provided that if any partner died, his heir could continue as a partner. One of the partners died on 16th December, 1975, which was fifteen days prior to the end of the accounting year relevant to assessment year 1976-77. After the death of the deceased partner, it was agreed amongst the surviving partners that the deceased partner’s son would be admitted as a partner of the firm. A new deed of partnership was drawn up and executed on 7th January, 1976, which was seven days after the close of the accounting year relevant to assessment year 1976-77. It was recorded in the new deed that the surviving partners had been carrying on the partnership business along with the deceased partner’s son with effect from the 17th December, 1975. On 24th December, 1975, the firm applied for fresh registration under section 184(8), both in Form No. 11 and Form No. 11A, along with a letter stating that the new partnership deed would be submitted at the earliest. The registration was refused by the Income-tax Officer and confirmed by the Tribunal on the ground that there was no instrument of partnership existing at the end of the accounting year relevant to assessment year 1976-77. It was held by the High Court that in the facts of the instant case the original firm was not dissolved but it was a case of change in the constitution of the firm. In commercial practice, the terms of a partnership constituted initially under an oral agreement are often subsequently recorded in writing in an instrument. This is not prohibited in law. In the instant case, the new deed showed that the reconstituted partnership had come into existence from a date other than

that of the execution of the instrument and also the terms and conditions on which the partnership had been and is being carried on. Therefore, the firm was entitled to registration for assessment year 1976-77.”.

Page 3499: sections 184-185:

At the end of the paragraph titled “*Assessee cannot ask the ITO for an opportunity to rectify the deed of partnership*”, add,—

“In *CIT v J. B. Coal Traders* [(1987) 164 ITR 450 (Pat)], the partnership deed erroneously described one of the partners as a minor. The date of birth of that partner was given in the deed. It was held that the other partners would be presumed to know that that partner had attained majority long before the execution of the partnership deed. Such a defect in the partnership could not be rectified by merely obtaining that partner’s signature in the deed. Since the partnership deed was defective, the firm was not entitled registration.”.

Page 3501: sections 184-185:

Lines 21-22 of the paragraphs titled “*Construction of a deed of partnership*”: The Supreme Court, in *State of Orissa v Titaghur Paper Mills Co. Ltd* [AIR 1985 SC 1293, 1345 (para. 117)], has laid down that it is a well-settled rule of interpretation that a document must be construed as a whole.

Pages 3501-3502: sections 184-185:

On the subject “*Nomenclature not decisive*”, reference may also be made to *State of Orissa v Titaghur Paper Mills Co. Ltd.*, AIR 1985 SC 1293, 1347 [holding that the nomenclature and description given to a document is not determinative of the real nature of the document or of the transaction thereunder. These, however, have to be determined from all the terms and clauses of the document and all the rights and results flowing therefrom and not by picking and choosing certain clauses and the ultimate effect or result].

Page 3503: sections 184-185:

In lines 16-17 from top, after “147 ITR 110 (MP)”, add,—“; *CIT v Jai Durga Rice Mill*, (1986) 159 ITR 807 (MP)” [holding that where the instrument of partnership does not, on a proper construction, disclose how the losses would be shared on the minor becoming major, it can be said that there occurs a change in the shares of the partners as evidenced by the instrument of partnership]. Also see, *CIT v J. B. Coal Traders*, (1987) 164 ITR 450 (Pat).

Page 3504: sections 184-185:

Line 8 of the paragraph titled “*Some, but not all, partners signing the deed of partnership—validity*”: The decision in *Jagan Nath Pyare Lal v CIT* [(1973) 92 ITR 207 (Pun)], has been reversed in *CIT v Jagannath Pyare-*

lal [(1985) 156 ITR 220 (SC)]. The Supreme Court has observed (at page 222 of 156 ITR): "...The law enjoins that the deed of partnership must be signed *personally* by each partner and this position is settled by the decision of this court in *Rao Bahadur Ravulu Subba Rao v CIT* [(1956) 30 ITR 163 at page 166...". With great respect to their Lordships, it is submitted that in the *Ravulu's* case [(1956) 30 ITR 163, 166 (SC)], their Lordships were concerned with the interpretation of the word 'personally' in the context of signing of the application for registration and not with the question about signing of the partnership deed. There, the Supreme Court held that as required by the relevant rules the application for registration must be signed 'personally' by each partner and it was not permissible that such application was signed by an agent of the partner on his behalf. Neither under the Partnership Act nor under the general law, it is essential that in signing a deed of partnership, a partner cannot act through his/her agent duly authorised in that regard.

Page 3506: sections 184-185:

In the last line of the paragraphs titled "*Instrument operative for a part of the accounting year—eligibility for registration*", after "77 ITR 292, 296-7 (Ker)", add,—"; *C Ag IT v Brahmagiri 'B' Estate*, (1986) 160 ITR 531 (Ker)".

In *Addl. CIT v Rahmat Khan Faizukhan* [(1985) 152 ITR 676 (Raj)], it has been held that a partnership formed by the oral agreement but on terms and conditions reduced to writing subsequently is validly constituted and is entitled to registration. In that case, an oral agreement of partnership was entered into on 1st April, 1967. The formal deed of partnership was drawn up on 27th January, 1968, wherein it was recited in the preamble that the parties have on and from 1st April, 1967, agreed to be partners. The accounting year relevant to assessment year 1968-69 ended on 31st March, 1968. The firm so-constituted was held to be a genuine one entitled to registration.

Page 3507: sections 184-185:

In line 7 of the paragraph titled "*Can a deed of partnership have retrospective effect*", after "145 ITR 560 (MP)", add,—"; *Addl. CIT v Rahmat Khan Faizukhan*, (1985) 152 ITR 676 (Raj)".

Page 3509: sections 184-185:

At the end of the paragraphs titled "*Instrument of partnership executed on later-purchased stamp paper*", add,—

"In *CIT v Rameshwar Dayal Ratanlal* [(1985) 156 ITR 411 (Pat)], the partnership deed was executed on 15th December, 1965, on a stamp paper purchased on 18th December, 1965. The said partnership deed along with Form No. 11 was filed on 20th August, 1966, before the Income-tax Officer. A finding of fact was recorded by the Tribunal that the document had in fact been executed sometime between 18th December, 1965, and 20th

August, 1966. In view of that finding, the firm was held entitled to registration.”.

Pages 3511-3512: sections 184-185:

At the end of the paragraphs titled “*A firm cannot be a partner in another firm*”, *add*,—

“In *I. P. Mulavalli & Sons v CIT* [(1987) 163 ITR 744 (Karn)], one of the partners of the assessee-firm become a partner in another firm. It was held that the share income from the another firm was assessable in the hands of the assessee-firm. In such a case, there is no double taxation.”.

Pages 3514-3515: sections 184-185:

On the subject “*Partnership between karta representing his HUF and some members of the HUF*”, reference may also be made to *Addl. CIT v Murlidhar & Co.*, (1986) 160 ITR 882 (Raj) [holding that it is permissible for the *karta* of a Hindu undivided family, representing the Hindu undivided family, to enter into a partnership with any other member of the Hindu undivided family, or any stranger who is taken in partnership even as working partner and even if they did not contribute any separate or individual property of their own]. Also see, *CIT v Murlidhar & Co.*, (1986) 160 ITR 885 (Raj); *Addl. CIT v Curious House*, (1987) 163 ITR 573 (Raj).

See, also, *CIT v Brij Bhushan Lal Suresh Kumar*, (1986) 159 ITR 825 (Punj); *CIT v Ramchand Nawal Rai*, SLP (Civil) No. 4880 of 1982: (1984) 149 ITR (St.) 131 (SC); *CIT v Chanchaldas Sobhrajmal*, (1987) 164 ITR 306 (Raj).

Page 3515: sections 184-185:

Lines 1-2 from top: The decision in *CIT v Ratanchand Darbarilal* [(1973) Tax LR 1539 (MP)=(1975) 100 ITR 258 (MP)] has been reversed in *Ratanchand Darbarilal v CIT* [(1985) 155 ITR 720 (SC)].

Page 3515: sections 184-185:

Before line 4 from bottom, *add*, —

“**Members may constitute themselves into a firm even without partition.—**It is wrong to hold that without a partition or a partial partition, some of the members of a Hindu undivided family could not constitute themselves into a firm. It is a well-settled proposition applicable to Hindu law that members of the joint family or even the coparceners can, without disturbing the status of a joint family or the coparcenary, acquire separate property or run independent business for themselves. It is quite possible that living within the joint family or being coparceners, the members can draw a part of their interest in the family business and invest the same in their separate business [*Ratanchand Darbarilal v CIT*, (1985) 155 ITR 720, 727 (SC)].

In *Tulsidas Kundanmal v CIT* [(1987) 163 ITR 810 (MP)], a partnership between the *karta* who separated himself from the family through a partial partition and his major son has been held to be a valid one.”.

Page 3522: sections 184-185:

After the paragraphs titled "*Definition of no help*", *add*,—

"Date of birth—how can be proved.—In the facts of *Addl. CIT v Anupam Fashion Palace* [(1984) 42 CTR (Del) 147], it has been held that the certificate of the municipal corporation together with the affidavit of the father of the person concerned conclusively established the date of birth of the person concerned.

The finding regarding date of birth of a person concerned is one of fact [*Krishna Agrico Electrical Industries v CIT*, (1986) 159 ITR 35 (Pat)].".

Page 3523: sections 184-185:

At the end of line 13 from top, *add*,—"That section 30(4) of the Indian Partnership Act, 1932, merely declares the rights of minors whose connection with the partnership is severed. That section has no relevance or bearing upon the validity of the partnership deed executed after such severance [*Grace Pharma Distributors v CIT*, (1987) 65 CTR (AP) 252, 254].".

Page 3524: sections 184-185:

After line 4 from top, *add*,—

"Minor becoming major in the midst of an accounting year ratifying actions of other partners from the beginning of the accounting year—effect of.—There is nothing in law to prevent a minor, who had been admitted to the benefits of a partnership, after attaining majority from accepting responsibilities as a partner of which he had not been a partner until the date of such acceptance. Such a thing may happen where a minor becoming major in the midst of an accounting year under a fresh deed of partnership providing that the accounts would be closed at the end of the accounting year concerned. Thus, he is competent to share losses, assuming that during the period of his minority, some losses accrued to the firm. In such circumstances, the firm constituted under the fresh deed of partnership is entitled to registration [*CIT v P. M. Syed Mohammed Kannu & Co.*, (1984) 149 ITR 441 (Ker); *Modern Stores v CIT*, (1986) 157 ITR 589 (AP); *CIT v R. Dwarkadas & Co.*, (1971) 80 ITR 283 (Bom)].

In any event, any amount lying in the capital account of the minor can, in view of the provisions of section 30(3) of the Indian Partnership Act, 1932, be legally utilised to meet the losses of the minors in the firm [*Jagadhri Electric Supply & Industrial Co. v CIT*, (1987) 166 ITR 143 (Punj)].".

Page 3524: sections 184-185:

On the subject "*Minor made a full partner—effect of*", reference may also be made to *Sudhansu Kumar Bose v CIT*, (1984) 150 ITR 626 (Cal); *Malu Khan Lalu Khan v CIT*, (1986) 157 ITR 457 (Raj); *Choudry Bros v CIT*, (1986) 158 ITR 224 (AP), special leave petition dismissed by the Supreme Court: (1985) 155 ITR (St.) 65 (SC); *Krishna Agrico Electrical Industries v CIT*, (1986) 159 ITR 35 (Pat) [holding that a partnership in

which a minor is admitted as a full partner is not valid and is not entitled to registration].

Page 3526: sections 184-185:

After serial No. (3), giving illustrations of cases about validity of a partnership wherein a minor is taken as a full-fledged partner, *add*,—

“(4) The assessee-firm was constituted with ten major partners and four minors were admitted to the benefits of the partnership. Two of the minors, G and C, attained majority in October, 1965, and June, 1966, respectively. A new partnership deed was executed in July, 1966, which was to take effect from 1st April, 1966. In the new firm an earlier partner was dropped and G and C were shown as full-fledged partners. It was held that C had become a major prior to the close of the financial year when the profit and loss account was finalised and he was a full-fledged partner. Hence, it could not be said that the deed of partnership was not validly constituted [*Jagadhri Electric Supply & Industrial Co. v CIT*, (1987) 166 ITR 143 (Punj)].”

Page 3528: sections 184-185:

On the subject “*Minor’s admission to benefits, whether signature of the guardian on the instrument essential?*”, reference may also be made to *Srinivasa Stainless Steel & Moulding Works v CIT*, (1987) 167 ITR 1 (AP) [holding that non-signing of the partnership deed by the guardian whereunder a minor was admitted to the benefits of the partnership will not vitiate the validity of the partnership as also the registration of the firm].

Page 3531: sections 184-185:

After serial No. (8), discussing illustrative cases about reasonable construction of a deed of partnership, *add*,—

“(9) One of the clauses in the deed of partnership specified shares of major partners as also of minor in the profits and losses of the firm. But other provisions in the partnership deed showed that minor was not liable for losses. On a reasonable construction of the partnership deed, it was held that the firm was validly constituted and was entitled to registration [*Conpro Corporation v CIT*, (1985) 151 ITR 1 (Karn)].”

Pages 3533-3534: sections 184-185:

On the subject “*Sub-partnership*”, reference may also be made to *CIT v Sakina Bai Ibrahim & Sons*, (1985) 154 ITR 540 (Ker) (no sub-partnership was found to exist); *CIT v Alisher Contractors*, (1986) 159 ITR 534 (Raj) (sub-partnership was found to exist).

Pages 3534-3535: sections 184-185:

On the subject “*Sub-partnership entitled to separate registration*”, reference may also be made to *CIT v Gangadhar Gowd Rama Gowd & Co.*, (1986) 158 ITR 75 (AP).

Pages 3535-3536: sections 184-185:

On the subject "*A sub-partnership agreement diverts the income*", reference may also be made to *CIT v Alisher Contractors*, (1986) 159 ITR 534 (Raj).

Pages 3536-3538: sections 184-185:

On the subject "*Specification of individual shares of the partners essential*", reference may also be made to *CIT v Kinema Reinforced Plastics*, (1985) 152 ITR 216 (Karn) [holding that in the absence of specification of shares in the partnership deed the Tribunal was justified in holding that the partners had equal shares].

Page 3538: sections 184-185:

After line 25 from top, *add*,—

"Where an instrument of partnership postulates the contingency of a partner dying and provides for it and if from the terms of the partnership deed, the shares of the partners of the reconstituted firm can clearly be determined, the firm is entitled to registration [*Addl. CIT v Punjab Sweet House*, (1986) 161 ITR 600 (Pat)].".

Page 3540: sections 184-185:

Lines 3-11 from top: The decision in *Mandayala Govindu & Co. v CIT* [(1976) 102 ITR 1 (SC)] has been followed in *CIT v Bhaichand Textile Mills* [(1986) 161 ITR 129 (Bom)]. In Bombay case, the assessee-firm consisted of two major partners and four minors admitted to the benefits of partnership. Though partnership deed did specify the shares of the partners and the minors in the profits of the firm, it did not provided for sharing of losses among major partners. It was held that the firm was not entitled to registration. Also see, *Metharam Lekhumal v CIT*, (1987) 32 Taxman 187 (Raj—FB), **overruling**, *Raj Construction Co. v Addl. CIT*, (1986) 157 ITR 734 (Raj).

Page 3540: sections 184-185:

In line 15 from bottom, after "122 ITR 362 (AP—FB)", *add*,—""; *Conpro Corporation v CIT*, (1985) 151 ITR 1 (Karn)" [holding that registration could not be refused and loss equal to minor's share shall also be borne by the adult partners in the proportion they had agreed to share profit or loss].

Page 3544: sections 184-185:

In line 20 from top, after "124 ITR 47, 54 (All)", *add*,—""; *Hari Sahu v CIT*, (1987) 167 ITR 309 (Ori)" [holding that where correct allocation or division is actually made before the completion of the assessment of the firm, registration cannot be refused if the other requirements stand duly satisfied].

Page 3549: sections 184-185:

In the last line, after “22(2)(ii)(a)]”, *add*,—[*Udaipur Soap Factory v CIT*, (1987) 167 ITR 613 (Raj)]” [holding that the application for registration must be made in Form No. 11A where the application is made before the end of the previous year and a change in the constitution of the firm has taken place during the previous year before the date of the application].

Page 3550: sections 184-185:

Lines 10-11 from top: The decision in *Amarsinh Gowamal & Sons v CIT* [(1976) 105 ITR 857 (Pat)] has been affirmed by the Supreme Court in *CIT v Amar Singh Gowamal & Sons* [(1986) 161 ITR 315 (SC)].

Pages 3550-3551: sections 184-185:

On the subject “*Application must be signed by all partners*”, reference may also be made to—

(1) *Athithope Estate v State of Karnataka*, (1984) 150 ITR 490 (Karn) [Application for registration must be signed by a partner ‘personally’ and not by a power-of-attorney agent]. Also see, *Nazarabad Plantation v State of Karnataka*, (1984) 150 ITR 499 (Karn).

(2) *CIT v Delhi Colonizers*, (1985) 154 ITR 50 (Del).

Pages 3552-3553: sections 184-185:

At the end of the paragraphs titled “*Enclosures with an application*”, *add*,—

“An application for registration of a firm, which is not accompanied by an instrument evidencing the partnership, cannot be treated as invalid. In such a case, registration cannot be refused [*Billimora Engg. Mart v CIT*, (1985) 156 ITR 153 (Guj)]. In that case, application for registration in Form No. 11 was filed on 3-11-1969 for assessment year 1970-71. Partnership deed was executed on 8-1-1970. Original deed of partnership was filed before the Income-tax Officer after 8-1-1970 but before August, 1972. It was held that the firm was entitled to registration.”.

Page 3553: sections 184-185:

In lines 7-8 of the paragraph titled “*Defect in application or declaration—opportunity to rectify to be given*”, after “89 ITR 274, 281 (SC)”, *add*,—“; *CIT v Amar Singh Gowamal & Sons*, (1986) 161 ITR 315, 319 (SC)”.

Page 3555: sections 184-185:

Before line 14 from bottom, *add*,—

“An opportunity to rectify the defect is also needed where—

—the application for renewal of registration under the 1922 Act provisions was signed by all partners but not signed by one of the

- minors who had attained majority on the date of application [*Dattatraya Gopal Shette v CIT*, (1984) 150 ITR 460 (Bom)];
- the declaration in Form No. 12 contained signature of the receiver and not the partners of the firm [*CIT v Ghosh & Sons*, (1986) 159 ITR 459 (Cal)];
- declaration in Form No. 12 was filed before the end of the relevant accounting year [*Mathew & Mathew v CIT*, (1986) 161 ITR 9 (Ker)];
- application in Form No. 11 instead of in Form No. 11A was filed [*Addl. CIT v Punjab Sweet House*, (1986) 161 ITR 600 (Pat)];
- the application for registration was not signed by one of the partners [*CIT v J. B. Coal Traders*, (1987) 164 ITR 450 (Pat)];
- the declaration in Form No. 12 was not signed by all the partners [*CIT v M. N. Ghosh & Sons*, (1987) 167 ITR 125 (Pat)].

Where the defect about non-signing of the application for registration by one of the partners is not removed even after opportunity in that regard, the Appellate Tribunal cannot direct the Income-tax Officer to grant registration on the ground that the firm is genuine [*CIT v Delhi Colonizers*, (1985) 154 ITR 50 (Del)].”

Page 3557: sections 184-185:

At the end of the paragraphs titled “*Condonation of delay*”, add,—

“In *CIT v Sagar Talkies* [(1986) 159 ITR 177 (AP)], the original application for registration filed did not contain signature of one of the partners due to differences amongst the partners. A fresh application for registration signed by all the partners was filed before completion of the assessment. It was held that the delay in filing a proper application should be condoned.”

Page 3559: sections 184-185:

After serial No. 3, discussing illustrative cases where the cause shown was held to be sufficient for condoning delay in filing application for registration, add,—

- “4. Application for registration in Form No. 11A duly signed by all the partners was handed over to the Chartered Accountant for filing the same in the income-tax department. That application was not filed in time due to oversight and the mistake was admitted by the Chartered Accountant. It was held, on facts, that it was a fit case for condoning delay in filing the application for registration [*Subhkaran & Sons v ITO*, (1985) 152 ITR 231 (Bom)].”

Page 3560: sections 184-185:

In lines 3-4 from top, after “18 Taxman 259, 262-3 (Guj)”, add,—“= (1985) 153 ITR 247 (Guj); *CIT v Jugsalai Electric Supply Co.*, (1987) 165 ITR 740 (Pat)” [on the subject “*Requisite conditions for continuation of registration under section 184(7)*”].

Page 3562: sections 184-185:

Before line 12 from bottom, *add*,—

“Change in the constitution was also held to be existent, where—

—under the terms of the partnership deed, one of the heirs of the deceased partner was inducted as a partner in the firm in respect, and to the extent, of the share and interest of the deceased partner [*Joshi & Co. v CIT*, (1986) 162 ITR 268 (Cal). Also see, *Udaipur Soap Factory v CIT*, (1987) 167 ITR 613 (Raj)];

—as per the provisions contained in the partnership deed, the firm was continued after the death of one of the partners by admitting the minor son of the deceased partner to the benefits of partnership and the books of the original firm was also continued [*Ballal & Padival Tiles v CIT*, (1987) 163 ITR 752 (Karn)].”.

Page 3563: sections 184-185:

After line 18 from top, *add*,—

“Continuation of registration was held to be granted.—In the facts of the following cases, continuation of registration was held to be granted:—

(1) *CIT v M. P. Bidi Leaves & Co.*, (1983) 144 ITR 487 (MP) [Continuation of registration was not granted on the ground that the assessee-firm was not a separate entity but was a branch of another assessee. The Tribunal gave a finding that the assessee-firm was a separate entity. The assessee-firm was held entitled to the continuation of registration]. Also see, *CIT v M. P. Bidi Leaves & Co.*, (1986) 156 ITR 487 (MP); *CIT v M. P. Bidi Leaves & Co.*, (1986) Taxation 81(3)-288 (MP).

(2) *CIT v Janatha Textiles*, (1987) 163 ITR 731 (Karn) [A five-partner firm carried on textile business. Accounting year for the assessment year 1974-75 ended on 26-10-1973. One of the partners, who was the lessee of the business premises, left the firm in September, 1973, and the firm was evicted from the premises within a few days. The firm was, therefore, dissolved with effect from 30th September, 1973, with distribution of its assets and liabilities and closing of the books of account. A new firm was constituted on 1st November, 1973, with four of the partners of the original firm and two others. It was held, on facts, that the original firm, having already been granted registration for assessment years 1971-72 to 1973-74, was entitled to continuation of registration for the assessment year 1974-75 as it was not a case of change in the constitution but of a dissolution of the firm].

(3) *CIT v Laxmi Rice Mills*, (1987) 164 ITR 571 (MP) [The firm was held entitled to continuation of registration as it was found to carry on business in the relevant accounting year]. Also see, *CIT v Dadha Co.*, (1987) 166 ITR 656 (Ker); *CIT v Laxmi Rice Mills*, (1987) 61 CTR (MP) 115.

But, continuation of registration is not possible where one of the partners of a two-partner firm has retired because in such a case there remained

no partnership in existence thereafter [*CIT v Associated Engg. Co.*, (1987) 63 CTR (Pat) 222].

Similarly, in *Raj Stores v CIT* [(1987) Taxation 86(3)-271 (All)], the continuation of registration was held rightly refused to a firm which ceased to be a genuine firm because of the fact that the change in the shares of the partners after the minor attained majority, so far as the losses were concerned, was not evidenced by any instrument."

Page 3564: sections 184-185:

In line 4 from top, after "113 ITR 772 (All)", add,—"; *CIT v Bishwanath Khirwal*, (1986) 161 ITR 382 (Pat)" [holding that once the assessee applies for extension of time and the Income-tax Officer does not reject the prayer for extension of time for filing the return and does not communicate it to the assessee, then it has to be presumed that the assessee is right in assuming that extension of time has been granted].

Page 3564: sections 184-185:

After line 4 from top, add,—

"The requirement as to the filing of a declaration in Form No. 12 for continuance of registration is only a statutory mode of proof in that regard. Such a requirement is not mandatory and the assessee is entitled to an opportunity for rectification of the defect in the declaration furnished [*Mathew & Mathew v CIT*, (1986) 161 ITR 9 (Ker)]."

Page 3564: sections 184-185:

After line 11 of the paragraph titled "*Condonation of delay in filing Form No. 12 declaration*", add,—

"For availing the benefit of condonation of delay in filing a declaration in Form No. 12, it is obligatory upon the assessee to have filed an application for extension of time before the last date for filing the return of income [*CIT v Jugsalai Electric Supply Co.*, (1987) 165 ITR 740 (Pat)]. In that case, neither an application for extension of time was filed in time nor there was anything brought on record to show that there was reasonable cause for not filing the application in time. It was held that it was not a fit case for extension of time in filing the belated declaration in Form No. 12."

Pages 3566-3567: sections 184-185:

At the end of the paragraphs titled "*Form No. 12 must be signed by all the partners*", add,—

"In *Kurumberhalli Estate v State of Karnataka* [(1984) 42 CTR (Karn) 261], the application for renewal of registration under the 1922 Act provisions was, on the death of a partner, was signed by a new partner who was inducted into the firm on such death. Grant of renewal was upheld."

Page 3567: sections 184-185:

At the end of the paragraph titled "*Form No. 12 is to be signed after the end of the relevant accounting year*", add,—

"However, dissenting from the view taken in *CIT v Trinity Traders* [(1974) 97 ITR 81 (Guj)], the Kerala High Court has held that a declaration in Form No. 12 filed before the end of the relevant accounting year can, at best, be treated as defective one and the assessee is entitled to an opportunity for rectification of such defect as provided for under section 185(3) [*Mathew & Mathew v CIT*, (1986) 161 ITR 9 (Ker)].

Continuation of registration under section 184(7) does not require specific order.—Section 184(7) does not require any specific order to be made by the Income-tax Officer for continuance of the registration. If the assessee satisfies the two requirements under the proviso thereunder, the earlier registration *proprio vigore* continues to operate for the subsequent year and the Income-tax Officer must assess the firm as a registered firm. A specific order may be necessary to discontinue the effect of registration and not to continue the effect of registration [*General Mechanical Works v CIT*, (1985) 151 ITR 752, 756 (Karn)].

Page 3568: sections 184-185:

First two lines of the footnote marked*: The decision in *Amarsingh Gowamal & Sons v CIT* [(1976) 105 ITR 857 (Pat)] has been affirmed by the Supreme Court in *CIT v Amar Singh Gowamal & Sons* [(1986) 161 ITR 315 (SC)].

Page 3574: sections 184-185:

Lines 6-7 from top: The decision in *CIT v Ratanchand Darbarilal* [(1975) 100 ITR 258 (MP)] has been reversed, on facts, by the Supreme Court in *Ratanchand Darbarilal v CIT* [(1985) 155 ITR 720 (SC)].

Page 3575: sections 184-185:

Lines 10 and 9 from bottom: The decision in *CIT v Ratanchand Darbarilal* [(1975) 100 ITR 258 (MP)] has been reversed, on facts, by the Supreme Court in *Ratanchand Darbarilal v CIT* [(1985) 155 ITR 720 (SC)].

Pages 3576-3577: sections 184-185:

At the end of the paragraphs titled "*Genuineness of the partnership to be distinguished from validity of partnership*", add,—

"The concept of a firm being valid in law is distinct from its factual genuineness and for the purpose of granting registration, both the aspects are relevant and must be present and one without the other will be insufficient. In other words, even if a firm brought into existence by executing an instrument of partnership deed is shown to possess all the legal attributes, it would be open to the taxing authority to refuse registration if it were

satisfied that no genuine firm has been constituted [*S. P. Gramophone Co. v CIT*, (1986) 158 ITR 313, 321 (SC)].

For the purposes of sections 184 to 186, genuine firm cannot be equated with a legally constituted firm. The concept of a genuine firm for the purposes of these provisions is that a firm seeking either registration or continuation of registration must continue with the identity of partners and the share *ratio* in profits and losses, as specified in the instrument. If there is a change in the identity of the partners and in the share *ratio* either in the profits or losses of the firm, then the firm ceases to be a genuine firm. So to determine the genuineness of the firm what is more important to see is whether the identity of partners and the share *ratio* in the profits and losses remained unaltered and not the legal frame of the firm. A firm which continued with the same constitution but with the changed *ratio* in profits or losses, cannot be said to be a genuine firm for the purposes of sections 184 to 186, though that may be a legally constituted firm [*Raj Stores v CIT*, (1987) Taxation 86(3)-271, 275 (All)].”.

Pages 3577-3578: sections 184-185:

At the end of the paragraphs titled “*Genuineness has to be tested on the cumulative effect of all the circumstances existing*”, add,—

“In the facts of *CIT v Mithalal Ashok Kumar* [(1986) 158 ITR 755 (MP)], it has been held that the Tribunal was justified in exercise of its powers of rectification, in setting aside its appellate order holding that the assessee-firm was not genuine. Thereafter, the Tribunal was held justified in rehearing the matter and coming to the conclusion that the assessee-firm was a genuine firm [*CIT v Mithalal Ashok Kumar*, (1986) 159 ITR 209 (MP)].

In the facts of *CIT v Manaklal Porwal* [(1986) 160 ITR 243 (Raj)], the Tribunal was held justified, in disposing of an appeal relating to a subsequent year, to take a different view, on the basis of additional evidence, to the effect that the assessee-firm was a genuine one. The partnership having been so held genuine one, only one-fourth share income of that firm was held assessable in the personal assessment of Shri Manaklal Porwal [*Addl. CIT v Manaklal Porwal*, (1986) 26 Taxman 766 (Raj)].

In *CIT v Lekhraj & Sons* [(1985) 153 ITR 535 (Mad)], the Tribunal was directed to rehear the appeal and record a clear finding regarding the genuineness of the firm. Also see, *Sri Krishna Finance Corporation v CIT*, (1987) 61 CTR (AP) 147.”.

Page 3583: sections 184-185:

Serial No. (v): The decision in *Subhash Medical Stores v CIT* [(1984) 147 ITR 486 (Raj)] has been followed in *Ramesh Chandra v CIT* [(1987) 166 ITR 8 (Raj)], holding that the firm was entitled to registration and the assessment treating the assessee as a sole proprietor was not justified.

Page 3584: sections 184-185:

After serial No. (za), discussing the illustrative cases of genuine partnerships, *add*,—

- “(zb) Non-contribution of capital by one of the partners as promised and non-credit of interest on partners' investments as stipulated in the partnership deed [*Achalsinhji Keshrisinhji & Co. v CIT*, (1986) 157 ITR 537 (Guj)].
- (zc) Authority to operate the bank account of the assessee-firm was given to persons other than the partners [*CIT v Dhaniram Gupta & Co.*, (1986) 158 ITR 531 (Cal)].
- (zd) One of the partners after his retirement did not give satisfactory answers and that partner stated that he was mentally ill [*Narnauli Jewel Corporation v CIT*, (1987) 163 ITR 293 (Raj)].
- (ze) Two of the partners of the firm had no power to terminate the partnership and seek dissolution [*CIT v Naidu's Bar & Restaurant*, (1987) 166 ITR 352 (Karn)].
- (zf) Inadequacy of capital, inefficiency, non-withdrawal by one of the partners and the account books not being maintained in regular course of the business, etc., were held not valid grounds for refusal of registration. Firm was held to be genuine one [*Addl. CIT v Sitaram Rathi*, (1984) 19 Taxman 79 (Pat)].
- (zg) It is always open to partners to enter into such arrangement or agreement between themselves as they choose, so long as it is not prohibited by law, or is hit by section 23 of the Contract Act. Just because some unspecified and unascertained rights of the minors were ignored while entering into a partnership under a fresh deed, the registration cannot be refused [*Grace Pharma Distributors v CIT*, (1987) 65 CTR (AP) 252, 254].

Also see, *CIT v Gyanchand Kewalramani*, SLP (Civil) No. 9292 of 1981: (1984) 148 ITR (St.) 65 (SC); *CIT v Desai Enterprises*, SLP (Civil) Nos. 1441-42 of 1982: (1984) 150 ITR (St.) 81 (SC).”

Page 3585: sections 184-185:

After line 12 from top, *add*,—

“(3) A partnership consisted of wife of K and two sons of K. Power-of-attorney was given to K who acted as manager of the firm. K was given absolute powers for conduct of business. It was held, on facts, that the terms and conditions of the power-of-attorney nowhere indicated that the partners were divested of their rights in the firm. There was no material on the basis of which it could be inferred that K was the *de facto* proprietor of the firm and that the firm was not genuine. The firm was held entitled to registration [*Mahavir Industrial Works v CIT*, (1984) 149 ITR 539 (MP)].”

Page 3586: sections 184-185:

Lines 3-4 from top: The decision in *S. P. Gramophone Co. v CIT* [(1974) 97 ITR 532 (Punj)] has been **affirmed** in *S. P. Gramophone Co. v CIT* [(1986) 158 ITR 313 (SC)], holding that the firm was not genuine one.

Page 3586: sections 184-185:

Lines 4-5 from top: The decision in *CIT v Ratanchand Darbarilal* [(1975) 100 ITR 258 (MP)] has been **reversed** by the Supreme Court in *Ratanchand Darbarilal v CIT* [(1985) 155 ITR 720 (SC)].

Page 3586: sections 184-185:

Serial No. (3): The Delhi High Court's decision has been reported as *Young India Mining & Transport Co. v CIT* [(1984) 149 ITR 226 (Del)].

Page 3586: sections 184-185:

After serial No. (3), discussing illustrative cases where the firm were held not genuine, *add,—*

“(4) Under the partnership deed one of the partners was made immune from loss. Partnership was held not genuine and not entitled to registration [*CIT v Janata Medical Stores*, (1985) 155 ITR 377 (Cal)].

Also see, *Harprasad Mohanlal v CIT*, (1986) Taxation 83(3)-218 (MP).”.

Page 3588: sections 184-185:

On the subject “*Illegal partnerships*”, reference may also be made to *Malu Khan Lalu Khan v CIT*, (1986) 157 ITR 457 (Raj).

Page 3589: sections 184-185:

On the subject “*One of the several activities illegal*”, reference may also be made to *CIT v Sham Lal Kewal Krishan*, (1986) 159 ITR 330 (Punj).

Pages 3589-3591: sections 184-185:

On the subject “*Excise or other licence taken out in the name of A—A enters into partnership—eligibility for registration*”, reference may also be made to—

(1) *Motilal Chunnilal v CIT*, (1987) 168 ITR 650 (Raj—FB) [As a result of admission of a partner by the excise licence-holder without the permission in writing of the Excise authorities, the partnership became one forbidden by law and, therefore, unlawful within the meaning of section 23 of the Indian Contract Act, 1872. Such a firm was held not entitled to registration]. The decisions in *Durga Madira Sangh v CIT* [(1985) 153 ITR 226 (Raj)] and in *CIT v Rooplal Danchand* [(1986) 162 ITR 742 (Raj)] have been **overruled**. Also see, *CIT v Chuni Lal*, (1987) 34 Taxman 163 (Raj).

Page 3591: sections 184-185:

Lines 33-37 from top: The decision in *Addl. CIT v Degaon Gangareddy G. Ramkishan & Co.* [(1978) 111 ITR 93 (AP)] has been **followed** in *CIT v Gangadhar Gowd Rama Gowd & Co.* [(1986) 158 ITR 75 (AP)].

Page 3593: sections 184-185:

After line 3 from top, *add*,—

“In *S. P. Gramophone Co. v CIT* [(1986) 158 ITR 313, 323 (SC)], it has been laid down that the *ratio in Abdul Rahim & Co.’s case* [(1965) 55 ITR 651 (SC)] would be inapplicable to a case where the firm is otherwise held to be not a genuine one.”

Page 3595: sections 184-185:

After line 6 from top, *add*,—

“In *CIT v Mittal Engg. Co.* [(1987) 163 ITR 415 (Punj)], the Tribunal held that *Explanation* to section 185(1) was not attracted as the alleged partners were not proved to be *benamidars* of one N. This was held to be a pure finding of fact involving no question of law. Also see, *CIT v Gulab Das*, (1986) 159 ITR 24 (Raj).”

Page 3598: sections 184-185:

On the subject “*Registration for a part of a year, whether permissible?*”, reference may also be made to—

(1) *CIT v Patliputra Engg. Corporation*, (1985) 154 ITR 854 (Pat) [Where, from a three-partner firm, two partners retires in the midst of the accounting year, continuation of registration till the date of retirement was held justified].

(2) *Ballal & Padival Tiles v CIT*, (1987) 163 ITR 752 (Karn) [Where there occurred a change in the midst of the accounting year, continuation of registration for a broken period is not permissible]. Also see, *Udaipur Soap Factory v CIT*, (1987) 167 ITR 613 (Raj).

(3) *Wazid Ali Abid Ali v CIT*, (1987) 35 Taxman 180A (SC) [Continuation of registration till the date of death of one of the partners in the midst of the accounting year was held justified where the firm stood dissolved]. Also see, *CIT v Chandigarh Bottling Co.*, (1986) 160 ITR 780 (Punj).

(4) *Ayodhya Prasad Parmeshwaridas v CIT*, (1987) 168 ITR 605 (MP—FB), **approving** *Ganesh Rice Mills v CIT*, (1981) 132 ITR 257 (MP) and **overruling** *CIT v Gopi Talkies*, (1987) 163 ITR 568 (MP) [Continuation of registration till the date of death of one of the partners in the midst of the accounting year was held not justified where the firm continued after change in the constitution].

Page 3605: sections 184-185:

After serial No. 9, giving some of the instances of question of fact, *add*,—

- “10. Whether a firm was genuine or not was a question of fact and it was for the Tribunal to reach a finding on such question [*Ratanchand Darbarilal v CIT*, (1985) 155 ITR 720 (SC)]. Also see, *CIT v Mithalal Ashok Kumar*, (1986) 158 ITR 755 (MP); *CIT v Gulab Das*, (1986) 159 ITR 24 (Raj); *CIT v Mithalal Ashok Kumar*, (1986) 159 ITR 209 (MP); *Delhi*

Hotels v CIT, (1986) 159 ITR 840 (Del); *CIT v W. L. Kohli & Co.*, (1987) 165 ITR 492 (Del); *Mahadeo Biscuits & Confectionery Works v CIT*, (1987) 166 ITR 411 (MP); *CIT v Mahendra Kumar Sethiya*, (1987) 166 ITR 475 (MP); *CIT v Dhaniram Gupta*, (1986) 24 Taxman 584 (Cal).

11. Whether the assessee-firm was a separate entity or merely a branch of another firm [*CIT v M. P. Bidi Leaves & Co.*, (1985) 156 ITR 487 (MP)].
12. Whether a partner is a *benamidar* for another [*CIT v Gulab Das*, (1986) 159 ITR 24 (Raj)]. Also see, *CIT v Mittal Engg. Co.*, (1987) 163 ITR 415 (Punj); *Rajasthan Textile Industries v CIT*, (1987) 164 ITR 732 (Raj).
13. Whether the assessee entered into partnership in his representative capacity or in his individual capacity [*Bhag Mal Charanji Lal v CIT*, (1987) 163 ITR 721 (Punj)].

Some of the instances of questions of law are:—

- (1) Whether, on the facts found by the Tribunal, an inference that the firm is a non-genuine could be drawn and registration could be refused in the light of the language of sections 184 and 185 [*Asharam Saboo & Sons v CIT*, (1986) 157 ITR 117 (MP)]. Also see, *Kailashchandra v CIT*, (1985) 22 Taxman 487 (MP).
- (2) Whether there was a valid and genuine partnership between the *karta* representing his Hindu undivided family and his son in his individual capacity [*CIT v Brij Bhushan Lal Suresh Kumar*, (1986) 159 ITR 825 (Punj)].
- (3) Whether, on the facts, the Tribunal was right in holding that the refusal of registration was not justified [*CIT v Kanhya Lal Ram Chand*, (1984) 17 Taxman 397 (Punj)].

Page 3606: sections 184-185:

At the end of the page, *add*,—

“While rejecting an application for registration under section 185(5), the Income-tax Officer is not required to give a finding that no genuine firm was in existence [*CIT v Faiz Mohd.*, *Hasim Ali*, *Taj Mohd.*, *Noor Mohd.*, (1986) 160 ITR 396 (Raj)].

In the facts of *Rajendrasingh Bharatsingh Chouhan v CIT* [(1987) 166 ITR 271 (MP)], the Tribunal was held justified in holding that the order of the Income-tax Officer refusing registration had been passed under section 185(5).”

Page 3608: sections 184-185:

At the end of the paragraph titled “*Relevant considerations for action under section 185(5)*”, *add*,—

“In the facts of *CIT v Faiz Mohd.*, *Hasim Ali*, *Taj Mohd.*, *Noor Mohd.* [(1986) 160 ITR 396 (Raj)], the refusal to register the firm was held not

warranted as the Income-tax Officer had not applied his mind judiciously while passing the order under section 185(5). Therefore, the Income-tax Officer was directed to consider the application on merits and to decide the matter afresh in accordance with law."

Page 3610: sections 184-185:

Before line 5 (excepting footnotes) from bottom, *add*,—

"Partnership property and individual property—distinction.—Under the law of partnership, some property remains the individual property of a partner and some property becomes partnership property. On dissolution, the partnership property has to be divided amongst the partners in accordance with the partnership deed, but the individual property reverts back to the individual owner.

A property can be acquired by a partnership using partnership funds. In such a case, the property becomes partnership property. A property can be brought into use by a partnership by a member of a partnership. In such a case, the property remains that of the partner though it is used by the partnership. At the time of dissolution, the partnership property has to be dealt with on the principles of general accounting between partners. The winding-up of the partnership involves a determination of the share of each partner in that partnership property. The individual property of a partner is outside the winding-up procedure; it merely reverts to the owner. A third case is possible which is when an individual brings his own property into the partnership, but treats it as a partnership asset. In such a case, the property will cease to be his individual property [*CIT v S. B. Harnam Singh & Sons*, (1986) 158 ITR 324, 328, 330-331 (Del)]. In that case, a firm carried on business in a premises taken on lease by one of the partners and paid rent to the landlord. The partnership deed specifically provided that the lease right would belong to the partner concerned. That partner died. A new firm was formed after the death of the lessee-partner. The new firm paid rent for the premises to the landlord. The tenancy of that premises was transferred to another concern for a sum of Rs. 1,60,000. It was held that the tenancy all along remained with the partner who was the lessee of the premises and on his death his legal heirs succeeded to the tenancy rights and they were entitled to the sum of Rs. 1,60,000 and not the new firm. At no stage, the tenancy rights became a partnership asset. The tenancy rights did not belong to the assessee-firm and any surplus out of Rs. 1,60,000 could not be assessed to tax in its hands."

Pages 3610-3611: sections 184-185:

On the subject "*Bringing in of individual property into partnership—whether formal document needed?*" reference may also be made to *CIT v Amber Corporation*, (1981) 127 ITR 29 (Raj); *Addl. CIT v Manjeet Engg. Industries*, (1985) 154 ITR 509 (Del); *CIT v Royal Amber Resorts*, (1987) 164 ITR 311 (Raj).

Page 3612: sections 184-185:

On the subject "*Deed of assignment or relinquishment of interest of a*

partner in the partnership asset—whether requires registration?”, reference may also be made to *Shyam Sunder Shaw v Netai Chand Shaw*, AIR 1986 Cal 230.

Page 3615: section 186:

After line 20 of the paragraph titled “*Cancellation of registration under section 186(1)*”, *add,—*

“Non-disclosure of income is not one of the grounds for cancellation of registration of a firm under section 186(1). If the firm was in existence, then it would be fair to presume that undisclosed income would have been distributed in the same manner as the disclosed income has been divided amongst the partners, as mentioned in the partnership deed [*CIT v Swaroop Chand Kojuram Barmer*, (1985) 154 ITR 660, 661 (Raj)].

Similarly, cancellation of registration under section 186(1) is not possible on the ground that the accounts were continued after the death of one of the partners without the execution of a fresh deed of partnership [*CIT v Kirana Traders*, (1986) 161 ITR 726 (Karn)].

In the facts of *CIT v Jacobs* [(1986) 160 ITR 579 (Ker)], it has been held that a firm does not cease to exist merely because it did not carry on business for a temporary period and, therefore, cancellation of registration was not justified.

In the facts of *CIT v Dhaniram Gupta & Co.* [(1986) 158 ITR 531 (Cal)], the firm was held to be genuine and, therefore, the registration was not liable to be cancelled. Also see, *CIT v Gulab Das*, (1986) 159 ITR 24 (Raj).”.

Page 3615: section 186:

Before line 7 from bottom, *add,—*

“In the facts of *Malu Khan Lalu Khan v CIT* [(1986) 157 ITR 457 (Raj)], the firm formed to secure the liquor licence was held to be invalid and, therefore, the cancellation of registration was held justified.”.

Page 3616: section 186:

At the end of the paragraphs titled “*No genuine firm (is) in existence as registered—implication of*”, *add,—*

“The words ‘no genuine firm in existence as registered’, appearing in section 186(1), refer to the absence of state of affairs during the previous year on the basis of which registration was granted to the firm [*CIT v Phair Laboratories*, (1985) 154 ITR 141 (Ker—FB)]. Also see, *Raj Stores v CIT*, (1987) Taxation 86(3)-271, 275 (All) ”

Page 3617: section 186:

After line 17 of the paragraphs titled “*Opportunity and approval*”, *add,—*

“For cancellation of registration under section 186(1), it is sufficient if the assessee had been given an opportunity of being heard. A notice is not necessary in that regard. Since the requirement of law is only to afford

reasonable opportunity of being heard, that opportunity can be given even across the table when the assessee is before the Income-tax Officer and when the latter is hearing the matter [*Punjab Ice Factory & Cold Storage v CIT: CIT v Punjab Ice Factory & Cold Storage*, (1986) 160 ITR 761 (Pat)].”.

Page 3619: section 186:

After line 5 from top, *add*,—

“Cancellation of registration under section 186(2)—when mandatory?—

Section 186(2) lays down that where there has been any failure on the part of a registered firm in regard to matters stated in section 144, the Income-tax Officer may cancel the registration of the firm. In terms of all the three clauses of section 144, it is possible to take the view that there has been no wilful default by the assessee. If the assessee-firm can satisfy the Revenue that there has been no wilful default, the benefit of continuation of registration may not be denied. But once a conclusion is reached that the default is wilful, the benefit conferred by section 185 must be denied. The expression ‘may’ in section 186(2) must be read as discretionary where the default is not wilful and mandatory where the default is wilful [*CIT v Standard Mercantile Co.*, (1986) 157 ITR 139, 142-143 (Pat), special leave petition dismissed by the Supreme Court: (1985) 155 ITR (St.) 65 (SC)]. In that case, the unambiguous finding of the Tribunal was that there was default on the part of the assessee. The further finding was that there was no substance in the plea put forth by the assessee that books of account have been lost by theft. From these two findings, the conclusion was inescapable that there was wilful fault on the part of the assessee. Therefore, there was no case for allowing continuation of registration to the firm and the cancellation of registration was justified.”.

Page 3619: section 186:

After line 11 of the paragraph titled “*Notice and opportunity necessary for cancellation of registration under section 186*”, *add*,—

“In *General Mechanical Works v CIT* [(1985) 151 ITR 752 (Karn)], all that the Income-tax Officer did was that he had issued a notice to the assessee-firm giving 14 days’ time intimating his intention to cancel the registration. The same was held hardly sufficient. Without affording an opportunity of being heard, the Income-tax Officer was held not to have jurisdiction to cancel the registration granted to the assessee-firm. The cancellation of the registration was, therefore, held to be illegal.”.

Page 3619: section 186:

Before line 10 from bottom, *add*,—

“The cancellation of registration under section 186 presupposes that at a particular time, there was a firm and the assessment had been made in the status of a registered firm and, therefore, when the registration is cancelled under section 186(1) or section 186(2), section 186(3) provides

that the assessment may be amended on the footing that the firm is an un-registered firm. But where from the very beginning, the finding is that there is no firm at all, then the question of assessing it as an unregistered firm would not arise [*Munilal Shivnarain Kothari v CIT*, (1984) 149 ITR 567, 572 (Raj)].”

Page 3620: section 187:

At the end of the paragraph titled “*Legislative amendment*”, add,—“This proviso has been added by the Taxation Laws (Amendment) Act, 1984 (67 of 1984).”

Page 3621: section 187:

In lines 8 and 7 from bottom, after “87 ITR 170 (Cal)”, add,—“; *Rambilas Chandram v CIT*, (1985) 156 ITR 344 (Raj)” [holding that where the firm was not dissolved on the death of a partner in view of a special provision in that regard contained in the partnership deed, there was merely a change in the constitution of the firm within the meaning of section 187(2)].

Page 3622: section 187:

After line 5 from top, add,—

“In the facts of *CIT v V. K. D. Ramanathan Chettiar & Co.* [(1985) 153 ITR 313 (Mad)], the matter was remanded to the Tribunal with a direction to go into the question of applicability of sections 187(1) and 187(2) by an examination and consideration of all facts on record including the documentary pieces of evidence.”

Page 3622: section 187:

At the end of the paragraph titled “*At the time of making an assessment*”, add,—

“In view of the phraseology of section 187(1), in case of a change in the constitution of the firm, the assessment has to be made on the firm as it exists at the time of assessment [*Addl. CIT v Punjab Sweet House*, (1986) 161 ITR 600 (Pat)].”

Pages 3622-3623: section 187:

On the subject “*Change in the constitution—one assessment to be made*”, reference may also be made to *CIT v Board Dyeing Co.*, (1987) 34 Taxman 128 (Raj); *CIT v Haryana Trading Co.*, (1987) Taxation 87(3)-93 (Raj).

Pages 3623-3625: section 187:

On the subject “*Reconstitution, whether possible after dissolution?*”, in the context of section 187(2), prior to its retrospective amendment by insertion of a proviso at its end by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with retrospective effect from 1st April, 1975, reference may also be made to the following difference in judicial opinion—

(1) One view, which seems to be more reasonable, is that where a firm is dissolved either by operation of law or by act of parties and thereafter a new firm is formed or the old firm is reconstituted so as to include one or

more partners of the old firm, there is a succession of one firm by another as contemplated by section 188 and such a case could not be governed by section 187 [*Addl. CIT v Emery Stone Mfg. Co.*, (1985) 153 ITR 150 (Raj); *Surana & Co. v CIT*, (1985) 153 ITR 190 (Raj); *CIT v Sukhlal Sohanlal*, (1985) 153 ITR 221 (Raj); *CIT v K. D. P. M. Board*, (1986) 157 ITR 247 (AP); *CIT v Raj Bros.*, (1986) 158 ITR 831 (AP); *CIT v Surajbhan Om Prakash*, (1986) 160 ITR 833 (Raj); *Pratap Chitrapat v CIT*, (1987) 163 ITR 556 (Raj); *Pratap Chitrapat v CIT*, (1987) 163 ITR 559 (Raj); *CIT v Jivan Ram Mangatrai*, (1987) 164 ITR 233 (Raj); *Metharam Lekhumal v CIT*, (1987) 165 ITR 568 (Raj); *CIT v Raj Bros.*, (1987) 165 ITR 720 (AP); *CIT v Surana Trade & Finance Corporation*, (1987) 165 ITR 728 (AP); *CIT v Aravalli Filling Station*, (1987) 32 Taxman 498 (Raj); *CIT v G. N. Textiles*, (1987) 167 ITR 181 (Raj)].

(2) According to the other view, such circumstances would result in a change in the constitution of the firm and would be governed by section 187 [*Chhote Lal Rewaprasad v CIT*, (1985) 156 ITR 565 (MP); *CIT v Nagpal Gulati & Co.*, (1985) 156 ITR 567 (MP); *CIT v Bhagwandas Dwarkadas*, (1987) 163 ITR 272 (MP); *Chandulal Shivji v CIT*, (1987) 163 ITR 413 (MP); *Ballal & Padival Tiles v CIT*, (1987) 163 ITR 752 (Karn); *CIT v Onkar Jagannath Gujarathi & Sons*, (1987) 166 ITR 141 (MP); *Dhanraj & Sons v CIT*, (1987) 32 Taxman 606 (Bom)].

In *Wazid Ali Abid Ali v CIT* [(1987) 35 Taxman 180A (SC)], it has been held, on facts, that the firm was dissolved on the death of one of the partners and there should be two separate assessments.

Page 3625: section 187:

After line 16 from top, *add*,—

“Considering the effect of the newly inserted proviso to section 187(2) by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with retrospective effect from 1st April, 1975, it has been held that where a firm stands dissolved on the death of any one of its partners in the absence of a contract to the contrary, the case, for and from assessment year 1975-76, is one of succession governed by section 188 and not a case of change in the constitution governed by section 187 [*CIT v Jasumal Devandas*, (1985) 156 ITR 551 (MP); *CIT v Kheta Sons & Co.*, (1986) 162 ITR 833 (MP); *CIT v Malhotra Dairy*, (1987) 166 ITR 241 (MP); *CIT v Girdharilal Kanchhedilal*, (1987) 166 ITR 296 (MP); *CIT v Assumal Veerumal*, (1987) 34 Taxman 105 (Raj); *Chanansingh Sodagar Singh v CIT*, (1987) 34 Taxman 127 (Raj); *CIT v Anandilal Bhagchand*, (1987) Taxation 86(3)-311 (MP); *CIT v Photo Electric Instruments*, (1987) Taxation 87(3)-45 (Raj); *CIT v Ramchander Banarasidas*, (1987) Taxation 87(3)-46 (Raj)].

Further, the said proviso excludes from the ambit of section 187(2)(a) only a case where the firm is dissolved on the death of any of its partners. In a case where there is no dissolution of the firm on the death of any of its partners on account of a contract to the contrary in the deed of

partnership, the said proviso is not attracted [*CIT v Gharsana Beriwal Road Works*, (1987) 34 Taxman 315, 317 (Raj); *CIT v Guman Mal Shushil Chand*, (1987) Taxation 87(3)-94 (Raj)].

In *Ayodhya Prasad Parmeshwaridas v CIT* [(1985) 156 ITR 554 (MP)], the matter was remanded to the Tribunal with directions to consider the effect of the newly inserted proviso to section 187(2) on the facts of the case and send an additional statement of the case.

In *CIT v Agency Hamdard Waqf Ltd.* [(1987) 166 ITR 698 (All)], the matter was remanded with a direction to rehear the appeal in the light of the provisions of the newly inserted proviso to section 187(2). Also see, *CIT v Hanuman Prasad Dwarka Prasad*, (1987) 168 ITR 116 (All).

It may be noted that the newly inserted proviso to section 187(2) cannot be read so as to mean that in every case where one of the partners dies, the firm is and must be held to be dissolved. The language of the proviso is clear and it says that nothing in clause (a) to section 187(2) shall apply to a case where a firm is dissolved on the death of any one of its partners. The proviso does not provide for automatic dissolution of the firm on the death of any of its partners [*Joshi & Co. v CIT*, (1986) 162 ITR 268, 284 (Cal)]. Here, it is pertinent to note that in taking the above view their Lordships have expressed their unability to accept the view in that regard taken by the Madhya Pradesh High Court in *CIT v Jasumal Devandas* [(1985) 156 ITR 551 (MP)]. With great respect, it is submitted that the learned judges have relied on the head notes of that case which have not been accurately written. The factual finding in the Madhya Pradesh case was that the firm was dissolved on the death of one of the partners of the firm as there was no contract to the contrary in the partnership deed. In the context of that factual position, the Tribunal held that the firm stood dissolved automatically.

It cannot be contended that the effect of the newly inserted proviso to section 187(2) is to recognise only dissolutions with reference to death of the partners and to derecognise all other modes of statutory dissolutions contemplated by sections 40 to 44 of the Partnership Act, 1932. Thus, even after the insertion of that proviso, a firm may be dissolved by mutual agreement amongst the partners [*CIT v Raj Bros.*, (1987) 165 ITR 720 (AP)].”.

Page 3632: section 188:

At the end of the paragraphs titled “*Scope of section 188*”, add,—

“Where the revenue has accepted that the assessee-firm was a successor to its predecessor-firm, the Tribunal was held justified in declining to permit the revenue from raising the plea that there had been no succession but only a change in the constitution of the firm [*CIT v Gunturu Kannabhai & Co.*, (1986) 158 ITR 353 (AP)].”.

Page 3636: section 189:

After line 24 from top, add,—

“**Automatic dissolution.**—Normally, a partnership dissolves on the death:

of a partner unless there is an agreement to the contrary. Even assuming that there is such an agreement, in a partnership consisting of two partners, on the death of one of them, the partnership automatically comes to an end and there remains no partnership which survives and into which a third party can be introduced [*Smt. S. Parvathammal v CIT*, (1987) 163 ITR 161 (Mad)].”.

Page 3637: section 189:

After line 18 from top, *add*,—

“For the purpose of assessment of a dissolved firm under section 189, the income of the firm has to be computed with reference to the market value of the closing stock and not the book value of such stock. On the other hand, in the case of a continuing business, it is open to the assessee-firm to value its stock-in-trade either at cost or market value, whichever is lower. This privilege does not extend to a dissolved firm [*Popular Workshops v CIT*, (1987) 166 ITR 348, 351 (Ker)].”.

Page 3639: section 189:

After the paragraph titled “*Each of the partners is an assessee*”, *add*,—

“**Each partner entitled to notice of orders passed by the ITO.**—In the case of a partnership firm which is dissolved, wherein each one of the partners is made liable for payment of taxes on joint and several liability, it is imperative that each one of the partners is put on notice about the orders passed by the Income-tax Officer [*CIT v Gangadhar Gowd Rama Gowd & Co.*, (1986) 158 ITR 75 (AP)].”.

Page 3653: section 192:

At the end of the paragraph titled “*Legislative amendments*”, *add*,—

“Section 192 has further been amended by the Finance Act, 1987 (11 of 1987), by inserting new sub-sections (2), (2A) and (2B) in section 192 and by amending sub-section (3) of section 192, with effect from 1st June, 1987.

The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Modification of the scope of deduction of tax at source from salaries.—

37.1 Under the existing provisions of section 192 of the Income-tax Act, tax has to be deducted at source by any person responsible for paying any income chargeable under the head “Salaries”.

37.2 There are cases where an employee renders service with more than one employer and the details of salaries drawn from earlier employer are required for working out the rate at which the tax is to be deducted at source in respect of the salary paid by the present employer. There are also cases where an employee does not disclose such other salary to the employer. In such cases, the employer normally cannot be held liable for making adequate deductions. With a view to simplify the provisions of

deduction of tax at source in such cases and also to check avoidance of tax on salary received by an employee from more than one employer, section 192 has been amended.

37.3 The new sub-section (2) inserted in section 192 provides for deduction of tax at source by such employer (as the taxpayer may choose) from the aggregate salary of the employee who is or has been in receipt of salary from more than one employer. The employee is now required to furnish to the present employer details of the income under the head "Salaries" due or received from the former/other employer and also tax deducted at source therefrom, in writing and duly verified, by him and by the former/other employer. The present employer will be required to deduct tax at source on the aggregate amount of salary (including salary received from former or other employer).

37.4 Under the existing provisions of section 89(1), it is the Income-tax Officer who is empowered to give relief from the incidence of tax at a higher rate in a case where an employee receives salary in arrears or in advance. The Finance Act, 1987, by inserting sub-section (2A) in section 192 provides that in respect of salary payment of employees of Government or public sector undertakings, deduction of tax at source may be made after allowing relief under section 89(1).

37.5 Presently, the person making payment of salary cannot take into account other incomes of the employee for the purpose of deduction of tax at source. The Finance Act, 1987, by inserting sub-section (2B) enables a taxpayer to furnish particulars of income other than salaries to his employer who shall deduct, out of the salary payment, the tax due on the total income subject to the condition that the total amount of tax deducted shall not be less than the amount deductible from income from salaries only.

37.6 These amendments will come into force with effect from 1st June, 1987."

Page 3653: section 192:

At the end of the paragraph titled "*Relevant Rules & Forms*", add,—
"Also see, rules 21AA, 26A and 26B and Forms No. 10E, 12B and 12C."

Page 3655: section 192:

After serial No. (2), giving illustrative cases on the point whether these payments represent salary income or not, add,—

"(3) Compensation awarded by the court in lieu of reinstatement by an order passed after 1st April, 1976, has been held to be exempt under section 10(10B) and no tax is required to be deducted at source out of such compensation [*Mahendra Singh Dhantwal v Hindustan Motors Ltd.*, (1985) 152 ITR 68 (SC)].

(4) Compensation, etc., awarded by the court to an employee for wrongful termination of employment under a decree cannot be regarded as salary. Such an amount assumes the character of a judgment debt and to such a payment, section 192 is not applicable [*Saroj Kumar Maheshwari v Hindustan*

Motors Ltd., (1985) 154 ITR 363 (Cal); *S. S. Miranda Ltd. v Shyam Bahadur Singh*, (1985) 154 ITR 849 (Cal)].”.

Pages 3656-3673: section 192:

Circular No. 388, dated 16th July, 1984 [reproduced at pages 3656-3673 of Vol. 4] have, subsequently, been modified by circular No. 407, dated 1st February, 1985 [(1985) 151 ITR (St.) 49-51] and circular No. 408, dated 8th February, 1985 [(1985) 152 ITR (St.) 201].

Page 3674: section 192:

Before the paragraph titled “*Other departmental circulars*”, *add,—*
 “For subsequent departmental circulars regarding income-tax deductions from salaries—

| <i>during the financial year</i> | <i>reference may be made to departmental circular</i> |
|--------------------------------------|--|
| 1985-86 | No. 429, dated 8-8-1985 [(1985) 156 ITR (St.) 64-80]. |
| 1986-87 | No. 459, dated 16-6-1986 [(1986) 160 ITR (St.) 44-50]; No. 465, dated 4-8-1986 [(1986) 161 ITR (St.) 64-65]; and No. 483, dated 4/31-3-1987 [(1987) 165 ITR (St.) 358]. |
| 1987-88 | No. 489, dated 25-6-1987 [(1987) 166 ITR (St.) 152-170].”. |

Page 3682: section 193:

Before line 7 from bottom, *add,—*

“Section 193 has further been amended by the Finance Act, 1986 (23 of 1986), with effect from 1st June, 1986. By this Act, the existing clause (*iib*) of the proviso to section 193 has been substituted by a new clause (*iib*). Under the substituted clause (*iib*), no tax is also required to be deducted at the time of payment of any interest payable on such debentures issued by a public sector company as the Central Government may notify in the Official Gazette in that behalf.

By the Finance Act, 1987 (11 of 1987), the *Explanation* at the end of clause (*iib*) of the proviso to section 193 has been omitted, with effect from 1st April, 1987. Such omission is consequential to the insertion, by that Act, of section 2(36A), coining a definition of the expression ‘public sector company’.”.

Page 3686: section 193:

After line 14 from top, *add,—*

“V. Notification No. S. O. 2611, dated July 16, 1986.—In exercise of

the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **'REC-13th Series Bonds'** issued by the Rural Electrification Corporation Limited, New Delhi, for the purposes of the said clause.

VI. *Notification No. S. O. 2612, dated July 16, 1986.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **'14% Secured Non-convertible Bonds'** issued by the Neyveli Lignite Corporation Limited, Neyveli, Tamil Nadu, for the purposes of the said clause.

VII. *Notification No. S. O. 2613, dated July 16, 1986.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **'14% Secured Redeemable N.T.P.C. Bonds—1986, First Series'** issued by the National Thermal Power Corporation Ltd., New Delhi, for the purposes of the said clause.

VIII. *Notification No. S. O. 2614, dated July 16, 1986.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **'14% Secured Redeemable Non-convertible Bonds—1986, "A" Series'** issued by the Indian Telephone Industries Limited, Bangalore, for the purposes of the said clause.

IX. *Notification No. S. O. 3829, dated October 29, 1986.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the following bonds issued by the Housing Development Finance Corporation Limited, Bombay, for the purposes of the said clause, namely:—

- (1) **HDFC—12.5% Bonds (1992—1996).**
- (2) **HDFC—12.5% Bonds (1995).**
- (3) **HDFC—12.5% Bonds (1996).**

X. *Notification No. S. O. 3830, dated October 29, 1986.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **'7-year 14% Secured Redeemable Non-convertible Bond—(A. series)'** issued by the National Hydroelectric Power Corporation Limited, New Delhi, for the purposes of the said clause.

XI. *Notification No. S. O. 3831, dated October 29, 1986.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **'1986—IPCL—14% Secured Redeemable Non-convertible Bonds'** issued by the Indian Petrochemicals Corporation Limited, Baroda, for the purposes of the said clause.

XII. *Notification No. S. O. 519, dated February 5, 1987.*—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the

Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the bonds issued by the Industrial Development Bank of India, Bombay, as specified in the Table hereto annexed, for the purposes of the said clause.

Table

| | | | | | | |
|-----|--------|--------|-------|------|-------|------|
| 1. | Series | No. 8 | 6% | IDBI | Bonds | 1987 |
| 2. | „ | No. 9 | 6% | IDBI | Bonds | 1987 |
| 3. | „ | No. 10 | 6% | IDBI | Bonds | 1988 |
| 4. | „ | No. 11 | 6.25% | IDBI | Bonds | 1988 |
| 5. | „ | No. 12 | 6.25% | IDBI | Bonds | 1989 |
| 6. | „ | No. 13 | 6.25% | IDBI | Bonds | 1989 |
| 7. | „ | No. 14 | 6.5% | IDBI | Bonds | 1989 |
| 8. | „ | No. 15 | 6.5% | IDBI | Bonds | 1990 |
| 9. | „ | No. 16 | 6.5% | IDBI | Bonds | 1990 |
| 10. | „ | No. 17 | 6.75% | IDBI | Bonds | 1992 |
| 11. | „ | No. 18 | 6.75% | IDBI | Bonds | 1992 |
| 12. | „ | No. 19 | 6.75% | IDBI | Bonds | 1992 |
| 13. | „ | No. 20 | 6.75% | IDBI | Bonds | 1993 |
| 14. | „ | No. 21 | 7.25% | IDBI | Bonds | 1996 |
| 15. | „ | No. 22 | 7.25% | IDBI | Bonds | 1996 |
| 16. | „ | No. 23 | 7.25% | IDBI | Bonds | 1996 |
| 17. | „ | No. 24 | 7.25% | IDBI | Bonds | 1997 |
| 18. | „ | No. 25 | 7.5% | IDBI | Bonds | 1997 |
| 19. | „ | No. 26 | 7.5% | IDBI | Bonds | 1997 |
| 20. | „ | No. 27 | 7.5% | IDBI | Bonds | 1997 |
| 21. | „ | No. 28 | 7.5% | IDBI | Bonds | 1998 |
| 22. | „ | No. 29 | 8.75% | IDBI | Bonds | 2000 |
| 23. | „ | No. 30 | 8.75% | IDBI | Bonds | 2000 |
| 24. | „ | No. 31 | 8.75% | IDBI | Bonds | 2001 |
| 25. | „ | No. 32 | 8.75% | IDBI | Bonds | 2001 |
| 26. | „ | No. 33 | 9% | IDBI | Bonds | 1999 |
| 27. | „ | No. 34 | 9% | IDBI | Bonds | 1999 |
| 28. | „ | No. 35 | 9% | IDBI | Bonds | 1999 |
| 29. | „ | No. 36 | 9% | IDBI | Bonds | 2000 |
| 30. | „ | No. 37 | 9.75% | IDBI | Bonds | 1998 |
| 31. | „ | No. 38 | 9.75% | IDBI | Bonds | 1998 |
| 32. | „ | No. 39 | 9.75% | IDBI | Bonds | 1998 |
| 33. | „ | No. 40 | 9.75% | IDBI | Bonds | 1999 |
| 34. | „ | No. 41 | 11% | IDBI | Bonds | 2001 |
| 35. | „ | No. 42 | 11% | IDBI | Bonds | 2001 |

XIII. Notification No. S. O. 1382, dated May 18, 1987.—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961, the Central Government hereby specifies 3-year

IDBI Capital Bonds issued by the Industrial Development Bank of India, Bombay.

XIV. Notification No. SO 1667, dated June 10, 1987.—In exercise of the powers conferred by clause (iib) of proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **"14 per cent. Secured Redeemable NTPC Bonds, 1986—Second Series"** issued by the National Thermal Power Corporation Ltd., New Delhi, for the purposes of the said clause:

Provided that the benefit under the said proviso shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs the said Corporation by registered post within a period of sixty days of such transfer.

XV. Notification No. SO 1940, dated July 3, 1987.—In exercise of the powers conferred by clause (iib) of proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **"7-year—14 per cent. Secured Redeemable Non-Convertible Telephone Bonds—T-86 Series—First Issue"** issued by the Mahanagar Telephone Nigam Limited, New Delhi, for the purpose of the said clause:

Provided that the benefit under the said proviso shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs the Mahanagar Telephone Nigam Limited by registered post within a period of sixty days of the transfer by endorsement and delivery.

XVI. Notification No. 7513, dated September 9, 1987.—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961, the Central Government hereby specifies **"HDFC—12.5% Bonds 1997(A)"** issued by the Housing Development Finance Corporation.

XVII. Notification No. 7557, dated September 24, 1987.—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of Income-tax Act, 1961, the Central Government hereby specifies **"11%—IDBI Bonds 2002 (45th Series)"** issued by the Industrial Development Bank of India, Bombay.

Notification u/s. 193, proviso (iiia).—I. Notification No. S. O. 5651, dated December 4, 1985, as amended by S.O. 556, dated January 29, 1986.—In exercise of the powers conferred by clause (iiia) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies all the securities of the Central Government and a State Government, the interest on which is payable to—

(a) the State Bank as defined in clause (g) of section 2 of the State Bank of India Act, 1955 (23 of 1955); or

- (b) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959); or
- (c) any nationalised bank, that is to say, a corresponding new bank as defined in section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), respectively,

for the purposes of the said clause.

II. Notification No. S. O. 744, dated March 5, 1987.—In exercise of the powers conferred by clause (iiia) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. S. O. 5651, dated the 4th December, 1985, the Central Government hereby specifies all the securities of the Central Government and the State Government, the interest on which is payable to the following nationalised banks, that is to say, corresponding new banks as defined in section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), whose ratio of published profits to working funds is less point one per cent., namely:—

1. UCO Bank
2. United Bank of India
3. Dena Bank
4. New Bank of India
5. Punjab and Sind Bank
6. Vijaya Bank
7. Punjab National Bank,

for the purposes of the said clause.”.

Page 3691: section 193:

Before line 15 from bottom, *add*,—

“For subsequent circulars setting out the rates at which income-tax and surcharge, if any, should have been deducted from interest on Government securities during—

| <i>financial year</i> | <i>reference may be made to departmental circular</i> |
|-----------------------|---|
| 1984-85 | No. 393, dated 5-9-1984 [(1985) 155 ITR (St.) 51-56]. |
| 1985-86 | No. 427, dated 31-7-1985 [(1985) 155 ITR (St.) 56-61]. |
| 1986-87 | No. 460, dated 3-7-1986 [(1986) 160 ITR (St.) 58-59]. |
| 1987-88 | No. 486, dated 1-6-1987 [(1987) 166 ITR (St.) 130-137].”. |

Page 3701: section 194:

Before line 9 from bottom, *add*,—

“IV. The Finance Act, 1987.—By this Act, the first proviso to section 194 has been amended, with effect from 1st June, 1987. As a result of this amendment, no tax is required to be deducted at source in respect of any payment of dividend, if such dividend is paid by an account payee cheque, and the amount of such dividend or the aggregate amounts of such dividend paid or payable to the shareholder, who is an individual-resident, during the financial year does not exceed Rs. 2,500 as against existing monetary limit of Rs. 1,000.

The scope and effect of the amendments made by the Finance Act, 1987 (11 of 1987), in sections 194, 194A, 194D, 195 and 197, as also of insertion of section 195A, substitution of section 206 and omission of sections 285 and 286, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Modification of the provisions relating to tax deduction at source.—38.1 With a view to rationalise the provisions of sections 194, 194A and 194D, the limits upto which no tax is to be deducted have been raised as under:—

| Sl. No. | Type of payment | | |
|---------|--|--|------------------|
| | | Present limit upto which no tax is deductible | Amended limit |
| | | Rs. | Rs. |
| 1. | Dividend (section 194) .. | 1,000 | 2,500 |
| 2. | Interest other than “Interest on securities” (section 194A) .. | 1,000 | 2,500 |
| 3. | Insurance commission (section 194D) | Nil | 5,000 |

38.2 Under the existing provisions deduction of tax at source from interest is to be made at the time of payment or credit to the account of the payee. With a view to prevent postponement of liability relating to such deduction of tax at source, section 194A has been amended to provide that tax will be deducted at source, on accrual of interest at the end of the accounting year or at the time of credit to the account of a payee or at the time of payment, whichever is earlier. Similarly, section 195 has been amended to ensure that deduction of tax at source from payment to non-residents will have to be made at the time of payment or at the time of giving credit to the account of non-resident, whichever is earlier. Any sum credited to “suspense account” or “interest payable account” shall be deemed to be credited for the purpose of tax deduction at source.

38.3 Enabling powers have been conferred on the Central Board of Direct Taxes under section 197 to make rules for prescribing procedure in relation to the issue of certificates by the assessing officer for authorising non-deduction of tax at source or for deduction at a lower rate.

38.4 The provisions relating to furnishing of annual return in respect of tax deduction at source incorporated presently in sections 285 and 286 have been, by the Finance Act, 1987, inserted in section 206. Consequently, sections 285 and 286 have been omitted.

38.5 The Finance Act, 1987, has introduced a new section 195A which lays down the method of calculation of tax deductible at source in cases where payments are made tax-free. Under clause (6A) of section 10, the tax borne by an Indian resident on royalty, etc., paid to foreign companies is not treated as part of the income of the foreign recipients. Section 195A provides for grossing up of the tax only if it forms part of the income. Since tax exempted under section 10(6A) does not form part of the total income, there would be no grossing up of such tax for the purposes of tax deduction at source. Similarly, the tax borne by the employer, to the extent it is exempt under section 10(6) (*viia*), shall not be grossed up for purposes of tax deduction at source.

38.6 These amendments will come into force from 1st June, 1987.”.

Page 3708: section 194:

Before line 3 from bottom, *add*,—

“For the financial year 1985-86, the rate of deduction—

| | | |
|---|-------|----------------------------|
| | | is <i>income-tax</i> +S.C. |
| —in case of resident non-company assessee | 20% | <i>Nil</i> |
| —in case of non-resident non-company assessee | 30% | <i>Nil</i> |
| —in case of domestic company | 21.5% | 1.075% |
| —in case of foreign company | 25% | <i>Nil</i> . |

For the financial years 1986-87 and 1987-88, the rate of deduction—

| | | |
|---|-------|---------------------------|
| | | is <i>income-tax</i> +S.C |
| —in case of resident non-company assessee | 20% | <i>Nil</i> |
| —in case of non-resident non-company assessee | 30% | <i>Nil</i> |
| —in case of domestic company | 21.5% | <i>Nil</i> |
| —in case of foreign company | 25% | <i>Nil</i> .”. |

Page 3718: section 194A:

After line 21 from top, *add*,—

“VI. *The Finance Act, 1987.*—By this Act, a new *Explanation* has been added after the proviso to section 194A(1) and section 194A(3)(i) has been amended, with effect from 1st June, 1987.

For the scope and effect of these amendments, reference may be made to paragraphs 38.1 and 38.2 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at page 6577, *ante*.”.

Page 3718: section 194A:

Last three lines: The monetary limit of Rs. 1,000, referred to in the last line, has been raised to Rs. 2,500, with effect from 1st June, 1987.

Page 3720: section 194A:

At the end of the paragraph titled "*Rates in force for deduction under section 194A*", *add*,—

"Such rates for financial years 1985-86 to 1987-88 are as under:

| Where the payee is— | FINANCIAL YEAR | | |
|--|----------------|---------|---------|
| | 1985-86 | 1986-87 | 1987-88 |
| (i) a person other than a company,— | | | |
| (a) who is re- sident | 10% | 10% | 10% |
| (b) who is not resident | 30% | 30% | 30% |
| (ii) a company— | | | |
| (a) domestic | 21% | 20% | 20% |
| (b) non-domestic | 68.25% | 65% | 65% |

Page 3723: section 194A:

After serial No. 63, listing the notified institutions, etc., under section 194A(3)(iii)(f), *add*,—

"64. Air Force Group Insurance Society,
New Delhi ..

S. O. 2825, dt. 5-6-1985.

65. Naval Group Insurance Fund, New Delhi .. S. O. 2551, dt. 29-5-1986."

Page 3723: section 194A:

At the end of the paragraphs titled "*Notified schemes under section 194A(3)(vi)*", *add*,—

"In pursuance of clause (vi) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Investment Deposit Account Scheme, 1986, framed by it, for the purposes of the said clause [*Notification No. S. O. 4247, dated 11th December, 1986: (1987) 165 ITR (St.) 188*]."

Page 3734: section 194B:

After the text of section 194B, *add*,—

"**Legislative amendment.**—Section 194B has been amended by the Finance Act, 1986 (23 of 1986). The scope and effect of the amendment have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'28. *Winnings from lotteries or crossword puzzle.*—Under the existing provisions of section 194B of the Income-tax Act, any person responsible for paying to any other person any income by way of winnings from lotteries or crossword puzzles in excess of Rs. 1,000 is required to deduct Income-tax on such payments at the rates in force. By an amendment, the afore-

said limit has been raised from Rs. 1,000 to Rs. 5,000. This amendment takes effect from 1-6-1986.'”.

Page 3738: section 194B:

Before line 8 from bottom, *add*,—

“For subsequent departmental circulars regarding deduction from lottery and crossword puzzle prizes during—

| <i>financial year</i> | <i>reference may be made to departmental circular</i> |
|-----------------------|---|
| 1984-85 | No. 390, dt. 8-8-1984 [(1984) 149 ITR (St.) 5-8]. |
| 1985-86 | No. 428, dt. 8-8-1985 [(1985) 156 ITR (St.) 61-64]. |
| 1986-87 | No. 467, dt. 21-8-1986 [(1986) 161 ITR (St.) 125-127]; and No. 478, dt. 14-1-1987 [(1987) 164 ITR (St.) 147]. |
| 1987-88 | No. 485, dt. 27-5-1987 [(1987) 166 ITR (St.) 121-124].”. |

Page 3741: section 194BB:

After line 26 from top, *add*,—

“**Legislative amendment.**—Section 194BB has been amended by the Finance Act, 1986 (23 of 1986), with effect from 1st June, 1987. The scope and effect of the amendment have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘29. *Winnings from horse races.*—As per the provisions of section 194BB of the Income-tax Act, a book-maker or a licensee for horse races in any race course or for arranging any wagering or betting in any race course responsible for paying to any person any income by way of winnings from any horse race in excess of Rs. 2,500 is required to deduct income-tax on such payments at the rates in force. The Finance Act, 1986, has raised the aforesaid limit from Rs. 2,500 to Rs. 5,000.’”.

Page 3744: section 194BB:

After line 16 from top, *add*,—

“For subsequent departmental circulars regarding deduction from income by way of winnings from horse races during—

| <i>financial year</i> | <i>reference may be made to departmental circular</i> |
|-----------------------|---|
| 1984-85 | No. 389, dated 4-8-1984 [(1984) 149 ITR (St.) 2-5]. |
| 1985-86 | No. 425, dated 24-7-1985 [(1985) 155 ITR (St.) 46-47]. |

1986-87

No. 467, dated 21-8-1986 [(1986) 161 ITR (St.) 125-127]; and No. 478, dated 14-1-1987 [(1987) 164 ITR (St.) 147].

1987-88

No. 485, dated 27-5-1987 [(1987) 166 ITR (St.) 121-124].”.

Page 3744: section 194BB:

At the end of the page, *add*,—

“It may be noted that section 10(3) has been amended by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987.”.

Page 3755: section 194C:

After serial No. VIII, *add*,—

“IX. *Deduction of income-tax at source—Section 194C of the Income-tax Act, 1961—Deduction from payments to contractors and sub-contractors in bidi manufacturing industry—Clarification regarding.*—Under section 194C of the Income-tax Act, 1961, a liability is cast on any person responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between him and

- (a) the Central Government or any State Government; or
- (b) any local authority; or
- (c) any corporation established by or under a Central, State or Provincial Act; or
- (d) any company; or
- (e) any co-operative society

to deduct an amount equal to two per cent. of such sum as income-tax on income comprised therein.

2. In the *bidi* manufacturing industry, generally there are three parties, the manufacturer, the *munshis* and the workers. The manufacturer provides the raw material, *i.e.*, leaves, tobacco, thread, etc., to the *munshis* who distribute the same to the workers who work at home. At regular intervals, the *munshis* collect the *bidis* prepared by the workers and hand over the same to the manufacturer. For this work, the manufacturer pays to the *munshis*, who in turn, make the payment to the workers. The workers as well as *munshis* get their payment at the rates agreed to.

3. The Board have had occasion to examine the question whether a *munshi* engaged by the *bidi* manufacturers is a contractor or an agent and whether the provisions of section 194C of the Income-tax Act, 1961, would apply to the payments made to him. The Board are advised that in view of the position that the definition of the expression “contractor” in the Bidi

and Cigar Workers (Condition of Employment) Act, 1966, includes sub-contractor, agent, *munshi*, *thekedar* or *sattedar*, the provisions of section 194C would apply in respect of payments made to *munshis*. It may be clarified that the provisions of section 194C are wide enough to cover oral contracts also. By the very nature of the functions performed by the *munshi*, there is an implied contract between the manufacturer and the *munshis* and, consequently, the *munshis* are contractors even though there is no written contract or agreement. As such, the provisions of section 194C of the Income-tax Act, 1961, would apply in respect of payments made to them.' [Circular No. 433, dated 25th September, 1985.]

X. 'Deduction of income-tax at source—Section 194C of the Income-tax Act, 1961—Deduction from payments to contractors and sub-contractors in bidi manufacturing industry—Clarification regarding.—Under file No. 275/30/82-IT(B) dated 25-9-1985, a Circular No. 433 was issued clarifying that the provisions of section 194C of the Income-tax Act, 1961, would apply in respect of payments made to *Munshis* and that would apply to payments under oral contracts also. The payments to *Munshis* which would be hit by the provisions of section 194C covered not only the payments to them for raw material but also the payments to the workers.

2. Board have received representations that many of the workers to whom such payments are made are entitled to the benefits of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Board's attention has also been drawn to the judgment of the Supreme Court dated 25th September, 1985, in the Writ Petitions No. 3605 to 3609 of 1978 and others in the case of *P. M. Patel & Sons v Union of India* [(1985) 67 FJR 457=AIR 1987 SC 447]. In the judgment in para. 3, the Supreme Court has dealt with three kinds of *bidi* workers:—

- (a) Directly employed by the manufacturers;
- (b) Employed through the medium of agency such as *Munshis* but the workers bring *bidi* to the factory for quality check and for getting their payments;
- (c) The workers are engaged by the *Munshis* and the *Munshis* ensure the quality and make payments.

It is held that in the types covered by category (b) above, the *bidi* workers are employees entitled to the benefits of provident fund, etc.

3. In view of the above judgment, it is now further clarified that the deductions under section 194C to be made from the payments to *Munshis* need not include payments to such home workers as fall in category (b) above.' [Circular No. 487, dated 8th June, 1987.]”

Page 3756: section 194C:

After line 9 from top, *add*,—

“Contractor and sub-contractor—meaning of.—From a perusal of section 194C, it is obvious that a ‘contractor’ for the purpose of these ‘pro-

visions would be any person who enters into a contract with the Central or any State Government, any local authority, and corporation established by or under a Central, State or Provincial Act, any company or any co-operative society for carrying out any work including the supply of labour for carrying out any work and a 'sub-contractor' would mean any person who enters into a contract with the contractor for carrying out, or for the supply of labour for carrying out, the whole or part of the work undertaken by the contractor under a contract with any of the authorities named above or for supply whether wholly or partly and labour which the contractor has undertaken to supply in terms of his contract with any of the aforesaid authorities [*ITO v Rama Nand & Co.*, (1987) 163 ITR 702, 704 (HP), special leave petition dismissed by the Supreme Court: (1986) 157 ITR (St.) 31 (SC)]. In that case, the respondent-firm purchased from the Government certain quantity of scants of timber. It was held that the respondent-firm was not a 'contractor' within the meaning of section 194C as it had not entered into any contract for carrying out any work or for supply of labour for carrying out any work with any Government, local authority, corporation, company or co-operative society. Therefore, the payments made by the respondent-firm to any person could not be treated as payments made by a 'contractor' to a 'sub-contractor' so as to attract the provision 194C(2).".

Page 3759: section 194D:

Before line 10 from bottom, *add*,—

"For subsequent departmental circulars regarding deduction of tax at source under section 194D during—

| <i>financial year</i> | <i>reference may be made to departmental circular</i> |
|-----------------------|---|
| 1984-85 | No. 391, dt. 8-8-1984 [(1984) 149 ITR (St.) 77-80]. |
| 1985-86 | No. 426, dt. 24-7-1985 [(1985) 155 ITR (St.) 47-50]. |
| 1986-87 | No. 462, dt. 10-7-1986 [(1986) 160 ITR (St.) 58-60]. |
| 1987-88 | No. 488, dt. 16-6-1987 [(1987) 166 ITR (St.) 142-145]." |

Legislative amendment.—A second proviso has been inserted in section 194D by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987. As a result of insertion of the second proviso to section 194D, no tax is required to be deducted from insurance commission where the aggregate amount of insurance commission payable in a financial year does not exceed Rs. 5,000."

Page 3763: section 195:

After the paragraph titled "IV. *The Finance Act, 1976*", add,—

"V. *The Finance Act, 1987*.—By this Act, for the existing sub-section (1) of section 195, a new sub-section (1) has been substituted; sub-section (2) has been amended; and a proviso has been inserted at the end of sub-section (2) of section 195, with effect from 1st June, 1987.

For the scope and effect of all these amendments, reference may be made to paragraphs 38.1 and 38.2 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at page 6577, *ante*."

Page 3764: section 195:

After line 21 from top, *add*,—

"The language of section 195(2) makes it clear that the obligation to deduct tax relates only to the appropriate portion of the gross sum, which would be chargeable as income in the hands of the recipient [*CIT v Superintending Engineer*, (1985) 152 ITR 753, 770 (AP)].

In *CIT v Jay Engineering Works Ltd.* [(1984) 149 ITR 425 (Del)], the assessee-company made an application to the Income-tax Officer for a tax clearance certificate claiming that no tax was payable by the assessee-company on the amounts to be paid by it to a non-resident Italian company in connection with a collaboration agreement. Even though the assessee-company had not made any application under section 195(2), the Income-tax Officer treated the application filed by the assessee-company as one under that section. The assessee supplied the relevant information asked for by the Income-tax Officer and participated in the proceedings before him. The Income-tax Officer passed an order under section 195(2) determining the net Indian portion of the profits at 33½ per cent. of the payments other than royalty to the non-resident company. The Tribunal held that the Income-tax Officer had no jurisdiction to pass order under section 195(2). On reference, it was held by the High Court that, in the facts of the case, the Income-tax Officer had jurisdiction to pass an order under section 195(2). Therefore, the matter was remanded to the Tribunal for decision on merits."

Page 3764: section 195:

After line 26 from top, *add*,—

"Expression 'any other sum' in s. 195(1)—what it implies?—The expression 'any other sum' occurring in section 195(1) does not necessarily refer to sums which represent wholly income or profits. The scheme of tax deduction at source applies not only to amounts paid which wholly bears 'income' character, but also to gross sums. the whole of which is not income or profits to the recipient, such as payments to contractors and sub-contractors under section 194C and the payment of insurance commission under section 194D. The provisions of section 195(2) make the intendment of the legislature very clear that what is required to be considered for purposes of tax deduction at source under section 195(1) is not wholly income or

profit. In that view of the matter, it cannot be contended that where the sum paid to any person is not wholly chargeable under the provisions of the Act, then the application of section 195 is ousted. Section 195 takes within its sweep any sums paid to a non-resident which do not wholly represent income or profits chargeable under the Act but a portion of which only so represents [*CIT v Superintending Engineer*, (1985) 152 ITR 753, 765, 767 (AP)].

Grossing-up.—Where under a contract, the tax that would be leviable on the profit in the hands of the non-resident was to be paid by the Indian company, the Income-tax Officer would be justified in adding to the net payment made only the amount of tax payable by the non-resident and the tax deductible at source should be determined with reference to the gross figure arrived at as above. Such arrangement entered into between the non-resident and the Indian company did not admit of a system of tax on tax [*CIT v Superintending Engineer*, (1985) 152 ITR 753, 771 (AP)].”.

Page 3765: section 195:

At the end of the paragraphs titled “*Sums chargeable under the provisions of the Act*”, add,—

“In the facts of *ITO v Shriram Bearings Ltd.* [(1987) 164 ITR 419 (Cal), special leave petition granted by the Supreme Court: (1986) 160 ITR (St.) 74 (SC)], it has been held that the respondent-company was not required to deduct tax at source under section 195(1) out of the sum payable to a non-resident company in regard to sale of trade secrets because such sum was not taxable in India.”.

Page 3771: new section 195A:

Before the text of section 196, add,—

“New section 195A.—A new section 195A, dealing with income payable ‘net of tax’, has been inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.

For the scope and effect of the newly-inserted section 195A, reference may be made to paragraph 38.5 of the departmental circular No. 495, dated 22nd September, 1987, which has been reproduced at page 6578, *ante*.”.

Pages 3773-3774: section 197:

At the end of the paragraphs titled “*Legislative amendments*”, add,—

“The reference to sections 194B and 194BB in section 197(1)(a) has been omitted as also sub-section (3) of section 197 has been omitted by the Finance Act, 1986 (23 of 1986), with effect from 1st April, 1987.

The amendments of section 197(1)(a) is consequential to the amendments, by that Act, of sections 194B and 194BB. The omission of section 197(3) is consequential to the omission, by that Act, of section 80K.

Further, by the Finance Act, 1987 (11 of 1987), section 197(1) has been amended and a new sub-section (2A) has been inserted in section 197, both with effect from 1st June, 1987.

For the scope and effect of these amendments, reference may be made to paragraph 38.3 of the departmental circular No. 495, dated 22nd September, 1987, which has been reproduced at page 6577, *ante*."

Page 3775: section 197:

At the end of the paragraphs titled "*Dividends from newly established industrial undertaking or hotel*", *add*,—

"On the interpretation of the provisions of section 197(3), which has now been omitted with effect from 1st April, 1987, reference may also be made to—

(1) *Tube Investment of India Ltd. v CIT*, (1985) 153 ITR 645 (Mad) [the assessee was held entitled to a certificate under section 197(3) specifying the qualifying exempted portion of the dividend].

(2) *Jaipur Udyog Ltd. v CIT*, (1985) 155 ITR 476 (Raj) [the assessee was held entitled to treat the letter of the Income-tax Officer as a determination for the purposes of section 197(3)].

Page 3784: section 199:

In the first line, for "*The Finance Act, 1982*", read "*The Finance Act, 1978*".

After line 2 from top, *add*,—

"VII. *The Finance Act, 1987*.—By this Act, section 199 has been amended, with effect from 1st June, 1987. As a result of such amendment, the credit for the tax deducted at source has to be given in the assessment (including a provisional assessment under section 141A), if any, *made under this Act for the assessment year for which such income is assessable*. Under the unamended section 199, the credit was to be given for such assessment *made for the immediately following assessment year under this Act*."

Page 3784: section 199:

At the end of the paragraph titled "*Scope of section 199*", *add*,—

"It is well-settled that a tax credit can be given only in cases where the tax is paid on the income in respect of which deduction has been made at source and which is offered for assessment [*CIT v Tanjore Permanent Bank Ltd.*, (1984) 149 ITR 788, 793 (Mad)]. Thus, an assessee, in whose hands a particular income is not taxed, is not entitled to get the credit in respect of tax deducted at source in respect of such income [*Madura Coats Ltd. v CIT*, (1986) 158 ITR 697 (Mad)].

In *CIT v Hindustan Ideal Insurance Corporation Ltd.* [(1984) 43 CTR (Mad) 35], the matter was remanded to the Tribunal to consider the applicability of section 199 not only with reference to rules 4 and 5 of the First Schedule to the 1961 Act but also in the light of section 44 and other

related provisions of the 1961 Act as also the relevant provisions of the Insurance Act, 1938.”.

Pages 3785-3787: section 199:

At the end of the paragraphs titled “*Tax deducted from dividends in respect of shares registered in a name other than their beneficial owner—section 199, proviso, clause (ii)*”, add,—

“In *CIT v Karam Chand Thapar & Sons Ltd.* [(1987) 166 ITR 636 (Cal)], the shares were at the material time being held by different banks. In Form No. 15B submitted by the assessee as required under rule 30A, the assessee had not been declared by the banks to be the beneficial owner. However, the brokers concerned through whom the shares reached the banks independently certified that the assessee was the beneficial owner of the shares in question. It was held that the absence of the declaration in Form No. 15B by the banks made little difference to the controversy. The assessee came within the ambit of section 199 read with rule 30A. Therefore, the assessee was entitled to the benefit of credit of tax deducted at source in respect of the dividends on such shares.”.

Page 3793: section 201:

At the end of the paragraphs titled “*Scope of section 201*”, add,—

“The liability that is cast upon the person concerned under section 201 is not because of any notice of demand, but because of the operation of the statute itself. Once the liability is incurred, no further demand is necessary to recover tax and the interest due thereon, unless the revenue were to initiate proceedings for imposition of penalty in terms of the proviso to section 201(1) read with section 221 [*Traco Cable Co. Ltd. v CIT*, (1987) 166 ITR 278 (Ker)].

The power of the Income-tax Officer under section 201 to deem the person responsible for paying any sum to a non-resident without tax deduction at source under section 195 as being in default extends only to the portion of income chargeable under the Act and forming part of the gross sum of money [*CIT v Superintending Engineer*, (1985) 152 ITR 753, 770 (AP)].

Where the tax has been deducted at source by the person concerned on the basis of a certificate granted in that behalf by the Income-tax Officer, such person cannot be treated as in default if it is subsequently found that in issuing such a certificate the Income-tax Officer has adopted an erroneous determination [*Jaipur Udyog Ltd. v CIT*, (1985) 155 ITR 476, 494 (Raj)].

Calculation of interest.—The liability to pay interest under section 201(1A) arises immediately upon each default and is to be computed only with reference to the law as it then stood. For calculating such interest, the provisions of rule 119A, regarding rounding off, are not applicable to the calculation of interest up to 31st December, 1974. Rule 40 does not contemplate the waiver of interest payable under section 201(1A) [*Bennet Coleman & Co. Ltd. v ITO*, (1986) 157 ITR 812 (Bom)].”.

Pages 3793-3794: section 201:

On the subject "*Employer held not assessee in default if the employee's assessment completed and tax paid*", reference may also be made to *CIT v Life Insurance Corporation*, (1987) 166 ITR 191 (MP).

Similarly, the employer cannot be deemed to be an assessee in default for not deducting tax at source on an amount which has been held to be not includible in the total income of the employee as per the assessment made in the hands of the employee concerned [*CIT v Kannan Devan Hill Produce Co. Ltd.*, (1986) 161 ITR 477 (Ker); *Kannan Devan Hill Produce Co. Ltd. v CIT*, (1986) 161 ITR 489 (Ker)].

Page 3796: section 202:

At the end of the paragraph titled "*Legislative amendments*", add,—

"The Finance Act, 1987 (11 of 1987), has amended section 202 by substituting the words 'recover tax' for the words 'levy tax', with effect from 1st June, 1987. The amendment is of a drafting nature."

Page 3797: section 203:

At the end of the paragraphs titled "*Legislative amendments*", add,—

"The Finance Act, 1987 (11 of 1987), has amended section 203, with effect from 1st June, 1987.

The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'Amendment of provisions relating to issue of certificate for tax deduction.—39.1 Under the provisions of section 203 of the Income-tax Act, any person responsible for deduction of tax at source is required, at the time of credit or payment of the amount, etc., to issue a certificate that tax has been deducted and to specify the amount deducted. The amount deducted at source has to be deposited within a certain period of time from the date on which the said amount was deducted. As the certificate for tax deduction has to be issued at the time of credit or payment of the amount, in most of the cases it cannot be ascertained that the amount deducted at source has been credited to the Government account. Section 203 has been amended so as to provide that the certificate for deduction of tax shall be issued, within such time, as may be prescribed.

39.2 This amendment will come into force from 1st June, 1987.'".

At the end of the page, add,—

*"New section 203A.—*A new section 203A, relating to allotment of tax deduction account number, has been inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.

The scope and effect of the newly inserted section 203A have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

'New provisions relating to allotment of tax deduction account number.

—40.1 For better monitoring of deduction of tax at source and its deposit in the Government account, the Finance Act, 1987, has inserted a new section 203A in the Income-tax Act. Every person deducting tax at source in respect of any payment made and who has not been allotted a tax deduction account number will make an application for allotment of such a number to the income-tax authority. This will be quoted in all the challans for payment of any tax deducted at source, in all certificates for tax deducted, in all the prescribed returns filed by persons paying salary and interest to residents and in all other documents pertaining to such transactions which the Central Board of Direct Taxes may prescribe.

40.2 A person who fails to comply with provisions of section 203A will be liable to penalty under the newly inserted section 272BB. The penalty may extend upto a sum of Rs. 5,000. A reference to section 272BB has been made by the Finance Act, 1987, in section 273B which provides that no penalty would be levied if a reasonable cause for failure is put forth by the person defaulting in terms of section 203A.

40.3 These amendments will come into force from 1st June, 1987.'".

Relevant rule and Form.—See, rule 114A [(1987) 167 ITR (St.) 75] of the Income-tax Rules, 1962, and Form No. 49B [(1987) 167 ITR (St.) 76-77] appended to those Rules.

Page 3799: section 204:

At the end of the paragraphs titled "*Legislative amendments*", add,—

"The Finance Act, 1986 (23 of 1986), has inserted a new clause (iia) in section 204 and has added an *Explanation* at the end of that section, with effect from 1st June, 1986.

The scope and effect of these amendments have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

'30.1 *Modification of the definition of the expression "person responsible for paying" for the purpose of deduction of tax at source from long-term capital gains in the case of a non-resident Indian.*—Under the provisions of section 195 of the Income-tax Act, any person responsible for paying to a non-resident any interest (other than "Interest on securities") or any other sum, not being dividends, which is chargeable under the Income-tax Act, is liable to deduct income-tax thereon at the rates in force. With a view to simplifying the procedure for the tax deduction at source and to avoid delay and inconvenience in the case of non-resident Indians wishing to remit the sale proceeds of "foreign exchange assets" [as defined in section 115C(b)], section 204 of the Income-tax Act which defines the expression "person responsible for paying" has been amended to provide that where the sum payable to a non-resident Indian represents consideration for the transfer by him of any foreign exchange asset (other than a short-term capital asset), the "authorised dealer" responsible for remitting such sum or crediting

such sum to his Non-resident (External) Account, shall be the person responsible for the deduction of tax as provided for under section 195 of the Act. For this purpose, 'non-resident Indian' and 'foreign exchange asset' shall have the same meaning as in Chapter XII-A of the Income-tax Act. Further 'authorised dealer' shall have the same meaning as in section 2(b) of the Foreign Exchange Regulation Act, 1973. Under the said section 2(b) read with section 6 of the FERA, 'authorised dealer' means the bank authorised by the Reserve Bank to deal in foreign exchange. The authorised dealers have been performing the following functions:—

- (i) To deal in foreign currency;
- (ii) To approve application for purchase of foreign exchange;
- (iii) To maintain rupee account in the name of non-residents;
- (iv) To maintain foreign currency account in the name of non-residents and predominantly owned overseas bodies corporate.

30.2 This provision of making the authorised dealer responsible for deducting and paying tax to Government will also achieve the purpose of integrating the exchange control procedure with tax concessions. Accordingly, the Reserve Bank will issue necessary guidelines to the authorised dealers to enable them to permit remittance of such long-term capital gains subject to the deduction of tax at a rate of 20 per cent. thereon without production of a no objection certificate from the income-tax authorities. It will be the responsibility of the Reserve Bank to obtain a declaration from the seller of a specified asset [in the application under section 19(5) of the FERA or in the suitable form] that the asset sold by him is a capital asset and not stock-in-trade. Also that the capital asset was not held by him for more than 36 months. In order to facilitate verification of this kind of statement, hereafter, when a foreign exchange asset is initially purchased by a non-resident Indian, a declaration may be obtained from him that the same is acquired as capital asset and not as stock-in-trade.

30.3 The amendment is effective from 1st June, 1986.'".

Page 3800: section 204:

Before the text of section 205, *add*,—

"Departmental circular.—The following circular issued by the Reserve Bank of India is also relevant to section 204:—

'Person responsible for paying'—meaning of—section 204 of the Income-tax Act, 1961—deduction of tax at source from long-term capital gains relating to foreign exchange assets.—'As authorised dealers are aware, in terms of paragraph 3 of A.D. (M.A. Series) Circular No. 27, dated 10-12-1982, Reserve Bank presently authorises designated banks to repatriate from India the sale proceeds of shares/debentures held by non-resident individuals of Indian nationality/origin (NRIs) and overseas bodies predominantly owned by such persons or to credit such funds to the seller's Non-resident (External)/FCNR account to the extent of the

cost of acquisition of investment or the actual amount of the sale proceeds, whichever is less. The excess amount (if any) representing the capital gains is remittable only after a tax clearance certificate from the Indian Income-tax Authorities is produced to the designated bank.

2. With a view to simplifying the procedure, avoiding delays and inconvenience to non-resident Indians wishing to remit sale proceeds of "foreign exchange asset" specified in Chapter XII-A of the Income-tax Act, 1961, section 204 of that Act, which defines the expression "person responsible for paying", has been amended with effect from 1-6-1986, for the purpose of deduction of tax at source from long-term capital gains relating to foreign exchange assets. The amended section 204 of the Income-tax Act includes a new clause (iia) which reads as under:

"(iia) In the case of any sum payable to a non-resident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973, and any rules made thereunder."

For this purpose an *Explanation* has also been added as under:

"*Explanation.*—For the purposes of this section—

- (a) 'non-resident Indian' and 'foreign exchange asset' shall have the meanings assigned to them in Chapter XII-A,
- (b) 'authorised dealer' shall have the meaning assigned to it in clause (b) of section 2 of the Foreign Exchange Regulation Act, 1973."

3. Under Chapter XII-A of the Income-tax Act, a separate tax regime has been made applicable to non-resident Indians in respect of their investment income and/or income by way of long-term capital gains arising from foreign exchange assets. For this purpose, the term "non-resident Indian" means an individual, being a citizen of India or a person of Indian origin (as defined in Chapter XII-A, *ibid*) who is not a "resident". "Foreign exchange asset" means any "specified asset" which has been acquired or purchased with, or subscribed to in, convertible foreign exchange. "Specified asset" means (i) shares in an Indian company; (ii) debentures of an Indian company other than a private company; (iii) deposits with an Indian company which is not a private company; (iv) securities of Central Government; or (v) any other notified assets. The investment income and long-term capital gains of the non-resident Indians from such foreign exchange assets are subject to income-tax at a flat rate of 20 per cent. A non-resident Indian may, however, elect not to be governed by the provisions of Chapter XII-A of the Income-tax Act for any assessment

year by furnishing to the Income-tax Officer his return of income for that assessment year under section 139 together with a declaration in writing to the effect that the provisions of Chapter XII-A of the Income-tax Act shall not apply to him for that assessment year and if he does so, his total income for that assessment year will be computed and tax on such total income charged in accordance with the other provisions of the Income-tax Act.

4. In view of the amendment of section 204 of the Income-tax Act referred to in paragraph 2 above, authorised dealers are responsible for deducting income tax at a flat rate of 20 per cent (twenty per cent.) of the long-term capital gains accruing to an NRI on the transfer of specified assets mentioned above, before remitting to him the balance sale proceeds (net of any other charges/expenses) or crediting such proceeds to his Non-resident (External)/FCNR account. For this purpose, the production of a 'No objection or tax clearance certificate' from the Indian Income-tax Authorities has been dispensed with. The authorised dealers must satisfy themselves that the following requirements/conditions have been fulfilled before remitting such sums:

- (i) The seller of shares is an NRI as defined in Chapter XII-A of the Income-tax Act.
- (ii) The shares/debentures/securities (*i.e.*, the assets specified in Chapter XII-A of the Income-tax Act) were acquired by or on behalf of the non-resident investor with repatriation benefits, in accordance with the special or general permission of Reserve Bank, out of remittance from abroad in foreign exchange or from the foreign origin funds held in the investor's Non-resident (External)/FCNR account, and such assets are sold with the Reserve Bank's specific or general permission or, in case of shares acquired under Portfolio Investment Scheme and sold through stock exchange, the sale/transfer of shares is effected in accordance with Notification No. F. 10/21/86-NRI Cell, dated 10-6-1986, issued by the Government of India under section 19(6) of the Foreign Exchange Regulation Act, 1973. Where the sale of shares/debentures acquired by the non-resident investor directly from the companies concerned is made on repatriation basis with the specific permission of Reserve Bank and the Bank's approval letter is produced, it will not be necessary for authorised dealers to verify that these assets were acquired by the seller by remittance in foreign exchange or out of foreign exchange funds.
- (iii) The bonus shares will be treated as foreign exchange assets, if the shares on the basis of which the bonus shares have been issued are "foreign exchange assets", as defined in Chapter XII-A of the Income-tax Act.

- (iv) If the rights shares are purchased or subscribed to in convertible foreign exchange, they would constitute "foreign exchange assets". However, the right to apply for new shares will not be treated as "foreign exchange assets" and, therefore, the long-term capital gains arising on the sale of this right will not be covered under the provisions of Chapter XII-A of the Income-tax Act.
- (v) The non-resident investor has submitted a declaration by a letter to the authorised dealer to the effect that the asset sold by him was his *bona fide* long-term capital asset and not stock-in-trade.
- (vi) The specified capital asset sold by the non-resident Indian was held by him for a period of more than 36 months[†] from the date of acquisition. For this purpose, the date of acquisition and sale may be determined in the following manner:
 - (a) In case the shares/debentures/securities were acquired by the NRI directly from the concerned company/Government, the date of acquisition will be the date of issue as indicated in the relative certificate.
 - (b) In case the assets (shares/debentures/securities) were purchased by the NRI through stock exchange, the date of acquisition of the asset by the NRI (*i.e.*, the date from which the capital asset has been 'held' by him) will be the date when the asset together with the transfer documents complete in all respects is handed over to the NRI or his agent.
 - (c) The date of 'transfer' of the capital asset, being a foreign exchange asset will be the date on which the asset together with transfer documents complete in all respects is handed over to the buyer or his agent.

Note.—The date of acquisition/transfer in cases covered by item (b) or (c) above, will have to be verified by the authorised dealer by examining the relevant facts. For this purpose, besides the declaration given by NRI seller/his agent/broker regarding the date of acquisition/transfer, the authorised dealer may see whether the payment for the asset was made near about the claimed date. If there is considerable time-lag between the claimed date of acquisition/transfer and the date of payment, the case will require further examination. Thus, if the date of acquisition is very much earlier than the date of payment or the date of transfer is long after the date when payment is received, the authorised dealer will have to examine the matter further and act accordingly.

- (vii) The amount of capital gains should be determined in accordance with the formula given in Annexure.

[†] Reference in this connection may be made to the subsequent amendment of section 2(42A) by the Finance Act, 1987 (11 of 1987).

5. The steps to be followed by the authorised dealers while computing the long-term capital gains are given along with a few examples in Annexure. In case the authorised dealers face any difficulty in computing the long-term capital gains in a particular case or in verifying the date of acquisition/transfer of the asset in question, they may seek clarification direct from the Income-tax Officer, Non-resident Circle in Ahmedabad, Bombay, Calcutta, Cochin, Delhi or Madras.

6. After deducting tax at the prescribed rate of 20 per cent on the long-term capital gains, the authorised dealers will be responsible for depositing the tax into the Government Treasury or the office of the Reserve Bank of India or State Bank of India or any of the subsidiaries of State Bank of India or any nationalised bank authorised to collect tax on behalf of the Income-tax Department through an income-tax challan, blank copies of which will be supplied by the Income-tax Officer, on request, for this purpose. The deposit must be made within one week from the date of deduction of tax.

7. The authorised dealers are also required to send within 14 days of the date of deduction of tax, a statement in Form No. 27, to the Income-tax Officer having jurisdiction to assess the authorised dealer concerned. A statement showing the computation of capital gains in each case, should also be sent to the Income-tax Officer having jurisdiction over the authorised dealer, along with Form No. 27.

8. Attention of authorised dealers is drawn to the provisions of section 201 of the Income-tax Act, 1961.

9. Authorised dealers may note that the instructions contained in paragraph 4 above will not be applicable in case where the shares/debentures/securities are sold by overseas corporate bodies owned directly or indirectly by non-residents of Indian nationality/origin (NRIs) to the extent of at least 60 per cent., as also where such assets sold by NRIs on repatriation basis were held for a period up to 36 months†. In such cases, the instructions contained in paragraph 3 of A.D. (M. A. Series) Circular No. 27 of 1982 will apply.

10. Authorised dealers may bring the contents of this circular to the notice of their NRI customers.

11. The directions contained in this circular have been issued under section 73(3) of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any contravention or non-observance thereof is subject to the penalties prescribed under the Act.' [*Circular No. 4 A.D. (M.A. Series), dated 11-2-1987: Issued by the Reserve Bank of India, Exchange Control Department, Central Office, Bombay.*]

ANNEXURE

Computation of long-term capital gains relating to a foreign exchange asset in the case of non-resident Indians (NRIs)

† See footnote at page 6593, *ante*.

For computing the long-term capital gains following steps may be followed:—

- Step I:* Check that the asset which has been transferred is a “foreign exchange asset” as defined in Chapter XII-A of the Income-tax Act, 1961.
- Step II:* Check that the asset transferred is a capital asset and not stock-in-trade and that a declaration to that effect is submitted by the NRI [Cf. para. 4(v) of A.D. (M.A. Series) Circular No. 4, dated 11-2-1987].
- Step III:* Find out the date from which the foreign exchange asset has been ‘held’ by the NRI.
- Step IV:* Check whether the asset has been ‘held’ for more than 36 months† before its transfer.
- Step V:* After the above has been checked, the capital gains on the transfer of foreign exchange asset is to be determined by subtracting from the full value of consideration received as a result of the transfer of the asset, the following two amounts, namely:—
- (i) Expenditure incurred wholly or exclusively in connection with such transfer, for example, commission paid to a broker (if accompanied by a receipt).
 - (ii) Cost of acquisition of the foreign exchange asset and the cost of any improvement thereto.

Note 1.—In this connection, it is clarified that interest, if any, on capital borrowed for acquiring the asset will not form part of the cost of acquisition or cost of improvement of the asset.

Note 2.—If the foreign exchange asset was on any previous occasion a subject of negotiations for its transfer, any advance or other money received and retained in respect of such negotiations shall be deducted from the cost in computing the cost of acquisition of the foreign exchange asset.

Examples

The following examples will illustrate as to how the long-term capital gains are to be worked out:—

Example I

- | | |
|---|-----------|
| 1. Number of shares subscribed by a NRI in convertible foreign exchange | 40 |
| 2. Value of each share | Rs. 100 |
| 3. Date from which shares are held | 1-6-1983 |
| 4. Date of sale (transfer) | 14-7-1986 |
| 5. Number of shares sold @ Rs. 150 per share | 20 |
| 6. Commission paid to broker | Rs. 200 |

† For footnote see page 6593, *ante*.

Computation of long-term capital gains.—Since the shares were held for more than 36 months prior to their transfer, the capital gains arising on their transfer are long-term capital gains. Further, as the shares were subscribed to in convertible foreign exchange, these are foreign exchange assets. Therefore, long-term capital gains arising on their sale are governed by the provisions of Chapter XII-A of the Income-tax Act, 1961. Consequently, tax @ 20 per cent. is to be deducted by the authorised dealers before remitting such gains.

| | | |
|-------------------------|---|---|
| Long-term capital gains | = | Sale price—(cost price+expenditure incurred for transfer) |
| | = | $20 \times 150 - (20 \times 100 + 200)$ |
| | = | $3,000 - 2,200$ |
| | = | Rs. 800 |
| Tax to be deducted | = | 20% of Rs. 800 = Rs. 160 |

Example II

| | |
|---|-----------|
| 1. Number of shares of value Rs. 100 each subscribed by a NRI in convertible foreign exchange | 200 |
| 2. Date from which shares held | 1-6-1983 |
| 3. Number of bonus shares issued of value Rs. 100 each | 100 |
| 4. Date of issue of bonus shares | 1-10-1983 |
| 5. Date of sale of bonus shares | 4-12-1986 |
| 6. No. of bonus shares sold @ Rs. 150 per share | 50 |
| 7. Commission paid to broker | Rs. 1,000 |

Computation of long-term capital gains.—As the shares are foreign exchange assets, the long-term capital gains arising on their sale are governed by Chapter XII-A of the Income-tax Act, 1961.

| | | |
|---|---|---|
| Cost of acquisition of each bonus share | = | Cost of original shares |
| | = | $\frac{\text{No. of original shares} + \text{No. of bonus shares}}{20,000}$ |
| | = | $\frac{200 + 100}{20,000}$ |
| | = | Rs. 66.66 |
| Cost of acquisition of 50 bonus shares | = | $50 \times \text{Rs. 66.66}$ |
| | = | Rs. 3,333 |
| Sale price of 50 bonus shares | = | 50×150 |
| | = | Rs. 7,500 |

Long-term capital
gains

$$\begin{aligned}
 &= \text{Sale price} - (\text{cost price} + \text{expenditure incurred for transfer}) \\
 &= 7,500 - (3,333 + 1,000) \\
 &= \text{Rs. 3,167.}
 \end{aligned}$$

Note 1.—In this example, if the bonus shares had been issued on 1-4-1984, then the capital gains arising on the sale of bonus shares will not be long-term capital gains as the bonus shares are not held for more than 36 months and, therefore, the provisions of Chapter XII-A of the Income-tax Act will not be applicable in such cases and the gains arising from such transfer will only be remitted on the production of a 'NOC' from Income-tax Authorities.

Note 2.—In the above example, if instead of the bonus shares, 50 original shares are sold, then, also the long-term capital gains will be computed in the same manner.

Example III

| | |
|--|------------|
| 1. Number of shares of value of Rs. 100 each subscribed by a NRI in convertible foreign exchange | 5,000 |
| 2. Date from which shares held | 1-7-1983 |
| 3. Number of right shares acquired @ Rs. 110 per share in convertible foreign exchange | 2,000 |
| 4. Date of acquisition of right shares | 1-10-1983 |
| 5. Date of sale of right shares | 31-12-1986 |
| 6. No. of right shares sold @ Rs. 200 per share | 50 |
| 7. Commission paid to broker | Rs. 1,000 |

Computation of long-term capital gains.—As the right shares are foreign exchange assets, the long-term capital gains arising on their transfer are governed by Chapter XII-A of the Income-tax Act, 1961.

$$\begin{aligned}
 \text{Cost of acquisition of each right share} &= \frac{\text{Cost of original share} + \text{cost of right share}}{\text{No. of original shares} + \text{No. of right shares}} \\
 &= \frac{5,000 \times 100 + 2,000 \times 110}{5,000 + 2,000} \\
 &= \frac{5,00,000 + 2,20,000}{7,000} \\
 &= \frac{7,20,000}{7,000} \\
 &= \text{Rs. 102.85}
 \end{aligned}$$

| | |
|------------------------|---|
| Cost of acquisition of | |
| 50 right shares | = 50×102.85 |
| | = Rs. 5,142.50 rounded off to Rs. 5,140 |
| Sale price of 50 | |
| right shares | = 50×200 |
| | = Rs. 10,000 |
| Long-term capital | = Sale price—(cost price+expenditure incurred |
| gains | for transfer) |
| | = $10,000 - (5,140 + 1,000)$ |
| | = Rs. 3,860.'." |

Page 3801: section 206:

At the end of the paragraph titled "*Legislative amendments*", add,—

"The Finance Act, 1987 (11 of 1987), has substituted a new section 206 in place of the then existing section 206, with effect from 1st June, 1987.

For the scope and effect of the so-substituted section 206, reference may be made to paragraph 38.4 of the departmental circular No. 495, dated 22nd September, 1987, which has been reproduced at page 6578, *ante*."

Pages 3814-3815: section 208:

At the end of the paragraphs titled "*Legislative amendments*", add,—

"The scope and effect of the amendment made by the Finance Act, 1985 (32 of 1985), in section 208 have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

'Raising of threshold for payment of advance tax in certain cases.—40.1 Income-tax is required to be paid in advance during every financial year in three equal instalments by specified dates on the assessee's current income (other than capital gains or income by way of winnings from lotteries, race winnings, etc.) liable to tax for the assessment year next following the said financial year. Advance tax is payable only where the income of the assessee subject to advance tax exceeds the specified limit. Under the existing provisions, the monetary limit specified in this behalf in the case of an assessee, other than a company, a local authority, a registered firm and Hindu undivided family having at least one member whose total income of the previous year exceeds the exemption limit, is Rs. 15,000.

40.2 With the raising of the exemption limit in the case of individuals, Hindu undivided families (other than those having at least one member whose independent total income exceeds the exemption limit), associations of persons, unregistered firms, etc., from Rs. 15,000 to Rs. 18,000, the monetary limit specified for the purpose of payment of advance tax in respect of such assessee has been raised from Rs. 15,000 to Rs. 18,000 to coincide with the exemption limit in their cases. A Hindu undivided family which has one or more members with taxable income exceeding Rs. 15,000 is required to pay advance tax if its income (exclusive of capital gains, etc.) exceeds Rs. 12,000. With the raising of the exemption limit, the aforesaid limit of Rs. 15,000 is also being raised to Rs. 18,000.

40.3 The amendments take effect from May 24, 1985, that is, the date on which the Finance Bill received the assent of the President and will, accordingly, apply in relation to advance tax payable during the financial year 1985-86 and subsequent years.'".

Page 3815: section 208.

For clause (c)(v) of the paragraph titled "*Change in law about the exemption limits for advance tax liability*", substitute,—

| | |
|-----------------------------------|--------------|
| "(v) between 1-6-1981 & 23-5-1985 | Rs. 15,000 |
| (vi) with effect from 24-5-1985 | Rs. 18,000". |

For clause (d)(iv) of that paragraph, substitute,—

| | |
|------------------------------------|--------------|
| "(iv) between 1-6-1981 & 23-5-1985 | Rs. 15,000 |
| (v) with effect from 24-5-1985 | Rs. 18,000". |

Pages 3859-3860: section 212:

On the subject "*A person who has not previously been assessed*", reference may also be made to *CIT v Maharaja Chintamani Saran Nath Sah Deo*, (1986) 160 ITR 929 (Pat); *CIT v Chintamani Saran Nath Sahdeo*, (1986) 162 ITR 255 (Pat).

A person, on whom an assessment was made by way of best judgment under section 144, which assessment was set aside under section 146, is a person who has been previously assessed and such a person was held not liable to file an estimate under the then section 212(3) [*CIT v Ammonia Supplies Corporation*, (1986) 162 ITR 664 (Del)].

Page 3861: section 212:

On the subject "*II. New provision fixing statutory obligation on taxpayers to pay a higher amount of advance tax than that demanded, in certain cases*", reference may also be made to *Popular Lungi Co. v CIT*, (1986) 158 ITR 656 (Mad)].

Pages 3866-3867: section 214:

On the subject "*'Regular assessment' in (pre-1984) section 214(1)—implication of*", reference may also be made to—

(1) *CIT v G. B. Transports*, (1985) 155 ITR 548 (Ker—FB), approving, *N. Devaki Amma v ITO*, (1980) 122 ITR 272 (Ker) [taking the one view to the effect that the expression 'regular assessment' in the pre-1984 section 214(1) is to be understood as the first or original assessment made by the Income-tax Officer under section 143 or section 144. That expression does not refer to a fresh assessment or modification of the assessment to give effect to the decision of the appellate or the revisional authority]. Also see, *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 851 (Punj).

(2) *Bardolia Textile Mills v ITO*, (1985) 151 ITR 389 (Guj—FB); *E.P.T.O. v Binod Mills Co. Ltd.*, (1986) 157 ITR 177 (Bom), affirming *Binod Mills Co. Ltd. v E.P.T.O.*, (1980) 122 ITR 778 (Bom) [taking

the other view to the effect that the expression 'regular assessment' in pre-1984 section 214(1) cannot be confined to the first or original assessment but also includes an assessment made pursuant to the directions of the appellate or revisional authority].

In *CIT v Tata Chemicals Ltd.* [(1987) 63 CTR (Bom) 54], it has been held that the assessee is entitled not only to interest under section 214 on the amount required to be refunded by reason of the rectification order but he is entitled to such interest upto the date of the order of rectification.

Page 3869: section 214:

At the end of the paragraphs titled "*Even belated payments, if during the financial year, are eligible for interest under section 214*", add,—

"In *CIT v Jaipur Udyog Ltd.* [(1987) 167 ITR 306 (Raj)], the belated payment of advance tax, even after the end of the financial year, in pursuance of an order passed by the Supreme Court, has been held as a payment of advance tax eligible for grant of interest under section 214."

Page 3870: section 214:

After line 9 of the paragraph titled "*Payment of advance tax by cheque—effective date of payment*", add,—

"A payment by cheque relates back to the date of delivery of the cheque [*CIT v Bharat Motors Service*, (1987) 163 ITR 843 (Karn); *CIT v P. V. S. Beedies (P.) Ltd.*, (1987) 163 ITR 846 (Karn)].

Where the due date is a sunday, the payment by cheque on the next working day was held to be within time [*CIT v C. J. Fernandez*, (1986) 160 ITR 602 (Karn)]."

Page 3874: section 214:

At the end of the paragraphs titled "*Proper remedy*", add,—

"In *CIT v Bharat Motors Service* [(1987) 163 ITR 843 (Karn)], it has been held that an appeal lies to the Appellate Assistant Commissioner under section 246(1)(c) against the refusal of the Income-tax Officer to grant interest under section 214."

Page 3880: section 215:

At the end of the paragraph titled "*Requisite conditions for attracting section 215*", add,—

"In the facts of *CIT v Dalmia Dairy Industries Ltd.* [(1986) 159 ITR 33 (Del)], the Tribunal was held justified in remanding the matter relating to charging of interest under section 215 to the Appellate Assistant Commissioner for decision on merits."

Page 3880: section 215:

Before line 2 (excluding footnote) from bottom, add,—

"Even belated payments, if made during the financial year, must be given credit for the purpose of charging interest under section 215.—For

the purpose of charging interest under section 215, even a belated payment, if made during the financial year, must be given credit [*Pfizer Ltd. v CIT*, (1987) 163 ITR 461 (Bom)].”.

Pages 3880-3881: section 215:

On the subject “*Assessed tax—implication of*”, reference may also be made to “*Assessed tax—implication of*” at pages 4985-4986 of Vol. 5 and “*Seventy-five per cent. of the ‘assessed tax’—method of calculation*” at pages 4986-4987 of Vol. 5.

Page 3882: section 215:

Before line 3 from bottom, *add*,—

“**Opportunity needed.**—Before charge of interest, *inter alia*, under section 215, the Income-tax Officer should give an opportunity to the assessee to show cause why interest should not be charged, consider the assessee’s representation in the matter and then pass a formal order if the circumstances require the charging of such interest [see, *M. G. Bros. v CIT*, (1985) 154 ITR 695 (AP)].”.

Page 3883: section 215:

After line 18 of the paragraph titled “*Waiver or reduction of interest by the Income-tax Officer*”, *add*,—

“Rule 40(5) has been couched in words of wide import. That rule provides that in any case in which the Inspecting Assistant Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable under section 215 or section 217 is *justified*, the Inspecting Assistant Commissioner may reduce or waive such interest. The word ‘justified’ is a word of wide import. Something can be said to be justified if it is proved or shown to be fair or according to justice or looked by sufficient reasons. Even in cases where the advance tax paid is less than 75% of the assessed tax, if it is proved or shown that the default was *bona fide* or was for sufficient reasons, then the power to waive or reduce interest must be exercised so as to provide just relief. In other words, if the conditions laid down for the exercise of discretion are satisfied, the authority vested with such discretion is under a statutory duty to exercise it. If there is omission to exercise discretion, *inter alia*, on account of the failure on the part of the authority to genuinely address itself to the matter before it, or due to misconception of the scope of its power under the statute, *mandamus* can issue directing such authority to rehear and determine the matter afresh according to law [*Patel Engineering Co. Ltd. v C.B. Rath*, (1985) 151 ITR 542, 554-55, 553 (Guj)]. In the facts of that case, it was held that the Inspecting Assistant Commissioner had given no reasons for reaching the conclusion that the waiver of interest was not justified. The order of the Inspecting Assistant Commissioner, therefore, was patently vitiated for want of reasons. When the matter went before the Commissioner, he refused to exercise his powers on the ground that, even if the

petitioner honestly believed its estimate to be correct, waiver or reduction could not be allowed because the payment of the tax due to the Government was anyhow withheld. This approach was manifestly contrary to the object, purpose, scope and intendment of rule 40(5). In the context of the wider superintendence jurisdiction of the High Court in exercise of its power under Article 227, it would not be justified in merely quashing the revisional decision of the Commissioner. It would be in the interests of justice to grant any other and further reliefs so as to put an end to these proceedings once and for all. Under the circumstances, a writ would issue directing that the interest determined to be payable under section 215 by the petitioner shall be treated as waived.”.

Page 3883: section 215:

At the end of the paragraphs titled “*Waiver or reduction of interest by the Income-tax Officer*”, *add*,—

“The authority concerned has to consider and decide the question of waiver or reduction of interest in accordance with law after taking into account all the relevant facts and circumstances of the case [*CIT v Perfect Pottery Co. Ltd.*, (1986) Taxation 81(3)-185 (MP)].

In *CIT v Devchand Pan Mal* [(1986) 160 ITR 545 (Guj)], it has been held that the Appellate Assistant Commissioner can waive interest charged under section 215.

‘Waiver’ or ‘reduction’—meaning of.—‘Waiver’ means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be an intentional act with knowledge. The Income-tax Officer must direct himself properly to the statutory provisions. He must call to his attention all relevant matters which he is bound to consider. He must exclude from his consideration all irrelevant matters. There must be some indication of the application of mind to these considerations. The Income-tax Officer is given a discretion under the law to reduce or waive the interest. The ‘reduction’ can only be by an overt act of first determining the interest payable and then reducing it in the quantum or the period [*P. C. Puri v CIT*, (1985) 151 ITR 584, 592 (Del)].”.

Page 3886: section 215:

After line 5 from top, *add*,—

“The following departmental circular is also relevant to section 215:—

‘Clarification regarding Board’s Circular No. 12/66-IT(B), dated 9-6-1965—*Waiver/Reduction of interest—Section 215/217—Rule 40(1) of the Income-tax Rules, 1962.*—Attention is invited to Board’s Circular No. 12/66-IT(B), dated 9-6-1965 (printed at pages 3885-3886 of Vol. 4). It has been brought to the notice of the Board that relying upon the example in the above circular, even in cases where there is no delay attributable to the assessee for completion of the assessment, waiver is limited only up to the date of taking up of the case for assessment beyond the period of the first

year. Under rule 40(1) of the Income-tax Rules, 1962, first a decision has to be arrived at as to whether and if so to what extent the delay in the completion of the assessment beyond the first year is attributable to the assessee. After deciding this, waiver should be given from the end of the first year to the period, if any, from where the delay is attributable to the assessee, and then the waiver should extend up to the date of completion of the assessment.' [Circular No. 492, dated 21st July, 1987.]".

Page 3886: section 215:

At the end of line 15 of the paragraph titled "*Omission to pass order, whether raises inference of waiver*", add,— "Thus, mere silence without more, on the part of the Income-tax Officer cannot give rise by any stretch of imagination to an inference of waiver of interest payable under section 215 [*P. C. Puri v CIT*, (1985) 151 ITR 585 (Del)].".

Pages 3889-3890: section 215:

On the subject "*Appeal*", reference may also be made to "*Order charging interest—whether appealable?*" at pages 4211-4212 of Vol. 5 and additions thereto.

Page 3892: section 216:

At the end of the paragraph titled "*Section 216, when attracted?*", add,—
"The Calcutta High Court, in *Pasupati Das & Sons (Pr.) Ltd. v CIT* [(1987) 34 Taxman 257, 264 (Cal)], has dissented from the Andhra Pradesh High Court's view in *Addl. CIT v Vazir Sultan Tobacco Co. Ltd.* [(1980) 122 ITR 251 (AP)] to the effect that where there is under-estimation of advance tax on account of under-estimation of current income, section 216 is not attracted. In the facts of Calcutta case, the matter was not remanded to the Tribunal as insignificant amount of interest was found to be involved.

"**Finding about underestimated advance tax is needed.**—A plain reading of section 216 makes it clear that interest cannot be levied under that section unless the Income-tax Officer finds that the assessee had underestimated the advance tax payable by him. Payment of interest is mandatory under the provisions of sections 215 and 217. On the other hand, the levy of interest under section 216 is discretionary. The question of exercising discretion would arise only when the Income-tax Officer finds that the assessee had underestimated the advance tax payable by him. The term 'under-estimate' indicates that the Income-tax Officer must find that the assessee had made too low an estimate. The estimate can be said to be an 'under-estimate' if it is deliberate or intentional. There has to be lack of *bona fides* on the part of the assessee. The finding of underestimation, therefore, cannot be made without appreciation of the facts which are pleaded or which are on record. The Income-tax Officer must record a finding that the assessee has underestimated the advance tax payable by him. An appeal

lies from an order passed under section 216 but the appellate authority would not be able to determine whether or not interest has been levied correctly under section 216 unless a finding regarding underestimate which is backed by reasons is recorded by the Income-tax Officer. It is, therefore, necessary for the Income-tax Officer to record a finding that the assessee had underestimated the advance tax payable by him and unless he records such a finding, the question of levy of interest would not arise [*CIT v Nagri Mills Ltd.*, (1987) 166 ITR 292, 295-296 (Guj)].

Relevant or irrelevant considerations.—The opening words of section 216 make it clear that for determination of the question whether or not the assessee had paid reduced amount of advance tax, the amount of income-tax determined as payable on making 'regular assessment' is to be taken into consideration to find out whether the advance tax paid by the assessee was under-estimated within the meaning of sub-clause (a) of that section. The revised estimate of advance tax submitted by the assessee is not relevant for this purpose [*CIT v Punjab Business & Supply Co. Pr. Ltd.*, (1986) 159 ITR 664, 666 (Punj)].

Page 3892: section 216:

At the end of the paragraph titled "*Charging of interest under section 216 is not automatic but discretionary*", add,—

"The word 'may' in section 216 indicates that the officer has a discretion in making a direction although unlike under section 215 or section 217 no power to reduce or waive interest is specifically conferred on the Income-tax Officer under section 216. In the absence of a direction, no interest will accrue even when there is a finding under the first part of section 216. There is no automatic accrual of interest under section 216. Accordingly, depending on the facts and circumstances, the officer may, in his discretion, levy the full interest, or reduce or waive the same [*Travancore Tea Estates Co. Ltd. v CIT*, (1985) 153 ITR 444 (Ker)]."

Page 3897: section 217:

On the subject "*Even belated payments, if during the financial year, must be given credit for the purpose of charging interest under section 217*", reference may also be made to *CIT v T. Gopal Bhandary*, (1986) 159 ITR 828 (Karn).

Page 3900: section 217:

After serial No. (4), giving illustrative cases where interest under section 217 was held not chargeable, add,—

"(5) *Patel Aluminium Pr. Ltd. v ITO*, (1987) 165 ITR 99 (Bom) [no interest could be charged where the assessee, who was required to file a statement under section 209A(1)(a), had been assessed to nil income for the previous assessment year on the basis whereof such statement had to be filed].

- (6) *CIT v Golcha Properties (P.) Ltd.*, (1987) 61 CTR (Raj) 185 [no interest held leviable under section 217(1A) for non-filing of estimate under section 212(3A) by the liquidator of the company under the *bona fide* belief that company's income was not liable to tax].”.

Page 3900: section 217:

After serial No. (1), giving illustrative cases where interest under section 217 was held chargeable, *add*,—

- “(2) *CIT v Maharaja Chintamani Saran Nath Sah Deo*, (1986) 160 ITR 929 (Pat) [interest held leviable where the new assessee did not file estimate and paid advance tax]. Also see, *CIT v Chintamani Saran Nath Sahdeo*, (1986) 162 ITR 255 (Pat).”.

Page 3900: section 217:

At the end of the paragraphs titled “*Rectification*”, *add*,—

“In *Bihar State Road Transport Corporation v CIT* [(1986) 162 ITR 114 (Pat)], the positive income was computed as a result of the rectification order. It was held that interest under section 217 can be charged in such rectification proceedings.”.

Page 3909: section 220:

At the end of the paragraph titled “*Provisions of section 220(2) are not ultra vires*”, *add*,—

“In *Kazan Chand v State of Jammu & Kashmir* [(1984) Tax LR 2841 (SC)], the provisions of section 8(2) of the Jammu & Kashmir General Sales Tax Act, 1962 (20 of 1962), providing for payment of interest in case of default in payment of tax have been held not to be discriminatory, arbitrary or unreasonable.”.

Page 3912: section 220:

At the end of the paragraph titled “*Board empowered to reduce or waive*”, *add*,—

“Section 220(2A) has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 1st April, 1987. The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under:—

“(vii) *Amendments to the provisions relating to the reduction or waiver of interest.*—10.1 Section 220(2A) of the Income-tax Act empowers the Central Board of Direct Taxes to reduce or waive the amount of interest payable by a taxpayer on account of non-payment or late payment of any tax (except advance tax), interest, penalty, fine or any other sum. This is subject to the fulfilment of the required conditions. Under the existing provisions, only the amount of interest payable—and not interest

paid—can be reduced or waived as per one interpretation. Such an interpretation puts a defaulter in a better position than the person who manages somehow to pay the interest even though it has caused him considerable hardship. The Amending Act has removed this anomaly by providing that the provisions will apply whether the interest is paid or is payable by an assessee.

10.2 The amendment shall come into force retrospectively with effect from 1st October, 1984, that is, the date on which sub-section (2A) of section 220 of the Income-tax Act came into force.

10.3 Further, in cases where the amount of interest under the above provisions is small, the assessee is inhibited from filing a petition to the Central Board of Direct Taxes for reduction or waiver. The interest leviable for other defaults under the Income-tax Act, such as, for late filing of return can be reduced or waived by the officers in the field formations irrespective of the amount involved. Hence, by the Amending Act, the power to reduce or waive the interest paid or payable under section 220 has been conferred on the Commissioner of Income-tax.

10.4 This amendment shall come into force with effect from 1-4-1987.'".

Page 3914: section 220:

Lines 18-19 from top: The decision in *A. V. Thomas & Co. v ITO* [(1982) 138 ITR 275 (Ker)] has been affirmed in *ITO v A. V. Thomas & Co.* [(1986) 160 ITR 818 (Ker)].

Page 3914: section 220:

After line 9 of the paragraph titled "*ITO's order set aside in first appeal but restored on second appeal—interest runs from the due date of the original demand*", add,—

"The decision in *K. P. Abdul Kareem Hajee v ITO* [(1983) 141 ITR 120 (Ker)] has been followed in *Mohammed Essa Moosa Sait v GTO* [(1987) 167 ITR 338 (Ker)].

Further, levy of interest under section 220(2) for the period the Tribunal first cancelled the penalty and then revived it in consequence of High Court's decision was held justified [*M. N. Jadhav v ITO*, (1986) 161 ITR 275 (Karn)].".

Page 3915: section 220:

After line 20 from top, add,—

"In *ITO v A. V. Thomas & Co.* [(1986) 160 ITR 818, 825 (Ker)], their Lordships find it difficult to rely on the said circular No. 334, dated 3rd April, 1982, by observing that that circular gives the view of the Department in the matter. The provision of law has to be interpreted regardless of the views expressed in the circular.".

Page 3916: section 220:

Before line 8 from bottom, *add*,—

“Interest on delayed payment of tax as per voluntary disclosures.—In *V. N. Swaminathan v CIT* [(1984) 150 ITR 375 (Mad)], entire tax on voluntarily disclosed wealth was not paid before 31-3-1976 but paid before 31-3-1977, without obtaining permission from the concerned authority for delayed payment. It was held that the petitioner had to pay interest as contemplated under section 15(5A) of the Voluntary Disclosure of Income and Wealth Act, 1976 (8 of 1976), for getting the benefit of the immunity under section 15(1) of that Act.”.

Page 3917: section 220:

Before line 8 from bottom, *add*,—

“The provisions of section 220(6), regarding stay of collection by the Income-tax Officer, are not applicable during the pendency of a second appeal before the Appellate Tribunal [Cf. *T. Lakshmikutty Amma v Addl. Ag. ITO*, (1987) 163 ITR 336 (Ker)].”.

Page 3918: section 220:

On the subject *“Discretionary power under section 220(6) is coupled with a duty”*, reference may also be made to *Shri Altafur Rahman v Union of India*, (1987) 164 ITR 609 (Gauh); *N. Rajan Nair v ITO*, (1987) 165 ITR 650 (Ker).

Pages 3919-3921: section 220:

On the subject *“Mode in which the power under section 220(6) should be exercised”*, reference may also be made to *N. Rajan Nair v ITO*, (1987) 165 ITR 650 (Ker). Also see, *Hallacarry Estate v Ag. ITO*, (1985) 155 ITR 411 (Mad).

Page 3928: section 220:

After line 24 from top, *add*,—

“In the facts of *Daya Shanker v TRO* [(1985) 21 Taxman 303 (All)], the writ petition was dismissed because the assessee had alternative remedies by way of filing revision application under section 264 before the Commissioner against refusal of the Income-tax Officer to grant stay of collection as also by way of filing stay petition before the Tribunal pending appeal before it.”.

Page 3933: section 221:

At the end of the paragraphs titled *“1922 Act”*, *add*,—

“Under the provisions of the 1961 Act, penalty for default in payment of income-tax as also of super-tax can be levied as the expression ‘tax’ has been defined in section 2(43), *inter alia*, to include both income-tax and super-tax. In the absence of such definition, penalty was held not leviable

for default in paying the super-tax [*Annaparai Estate Ltd. v State of Karnataka* (1984) 150 ITR 254 (Karn)].”.

Page 3934: section 221:

Before line 7 from bottom, *add*,—

“III. *By the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986).*—By this Act, the then existing second proviso to section 221 has been substituted by a new proviso, with effect from 10th September, 1986. Under the so-substituted second proviso the burden of proving the existence of reasonable cause for default, to the satisfaction of the Income-tax Officer, is cast specifically on the assessee.”.

Pages 3936-3937: section 221:

At the end of the paragraph titled “*Penalty not automatic, but discretionary*”, *add*,—

“The imposition of penalty provided in section 221(1) is within the discretion of the Income-tax Officer when the assessee is in default in making payment of income-tax. Obviously, the exercise of discretion is not to be arbitrary but is dependent on the facts and circumstances of the case. It is equally clear that penalty is not automatically attracted in case of default in payment of income-tax and the same has to be imposed if the facts and circumstances on which the discretion is to be exercised justify imposition of penalty [*CIT v Dadu Wala & Co.*, (1987) Taxation 86(3)-308, 309 (Raj)]. In that case, the Tribunal was held justified in cancelling the penalty imposed under section 221(1).”.

Page 3942: section 221:

Before line 12 from bottom, *add*,—

“The above circular No. 18-D (XLV-14) of 1963, dated 15th July, 1963, has been held binding on the income-tax authorities by the Patna High Court in *CIT v Sriram Agrawal* [(1986) 161 ITR 302 (Pat)], till it remained in force.”.

Page 3944: section 221:

At the end of the paragraphs titled “*Section 221 does not create an absolute offence—mens rea to be proved*”, *add*,—

“The above is to be read keeping in view the provisions of the second proviso to section 221(1) as substituted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986.”.

Page 3946: section 221:

Before line 6 from bottom, *add*,—

“In *Gurukrupa Service Station v ITO* [(1986) 162 ITR 831 (Karn)], a show-cause notice under section 221(1) issued against a firm was challenged by one of two partners of the firm contending that the recovery is sought

to be enforced against him as an individual and the notice is wholly unauthorised and illegal. The High Court declined to interfere with the notice that did not really concern the petitioner.”.

Page 3947: section 221:

On the subject, “*Time bar, if any*”, reference may also be made to *V. Kunhikannan v Ag. ITO*, (1981) 132 ITR 29 (Ker).

Page 3950: section 222:

After line 11 from top, *add*,—

‘Rule 118(1) speaks of only pre-certificate interest and not of post-certificate interest. So far as post-certificate interest is concerned, it is provided in rule 119(3). Rule 119(1) expressly says that at the time of issuing a certificate under section 222, the Income-tax Officer shall calculate the interest payable under section 220(2) on the amounts of arrears of tax up to the date of issue of the certificate. In this view of the matter, it cannot be contended that unless a notice of demand as contemplated by rule 118(1) is issued, the amount of pre-certificate interest cannot be included in the certificate [*Dadala Ramanayya v TRO*, (1987) 168 ITR 266, 272 (AP)].’.

Page 3965: section 222:

On the subject “*Provisions not unconstitutional*”, reference may also be made to *Sawar Mal Choudhary v State Bank of India*, (1987) 165 ITR 467 (Pat), which concerned the constitutionality of certain provisions of the Bihar and Orissa Public Demands Recovery Act, 1914.

Page 3972: section 222:

Lines 8-9 from top: The decision in *K. G. Devassy v Addl. STO* [(1980) 46 STC 118 (Ker)] has been reversed in *K. V. Devassy v Addl. STO* [(1987) Tax LR 2041 (Ker)].

Page 3974: section 222:

In line 13 from top, after “(1978) CTR (Karn) 79”, *add*,— “; *Manohar Lal v CIT*, (1987) 34 Taxman 418, 422 (All)” [holding that the tax liability of a firm cannot be realised from the partners unless they are held as ‘assesseees in default’ within the meaning of section 222].

Page 3974: section 222:

After line 13 from top, *add*,—

“Where a certificate for recovery of tax from a firm is issued only against the firm and not against the individual partner or partners, it will be open to the Department to issue fresh recovery certificate against a partner or partners of the firm for effecting recovery of tax. The issue of the fresh certificate is only a continuation of the action taken earlier and

the proceedings will not be barred by limitation [*Shri Nand Lal v TRO*, (1987) 166 ITR 33 (Punj)].”.

Pages 3975-3976: section 222:

On the subject “*Firm dissolved, recovery of assessed tax*”, reference may also be made to *Shri Nand Lal v TRO*, (1987) 166 ITR 33 (Punj); *Sellammal v Union of India*, (1987) 61 CTR (Mad) 223.

Page 3976: section 222:

At the end of line 2 from top, *add*,— “That section 189(3) only indicates joint and several liability of the partners of a dissolved firm to pay the tax levied against the firm. Unless the Income-tax Officer had assessed the partners of the firm in accordance with the provisions of sections 182 and 183 and relevant notices had been served upon the partners, they cannot be termed as ‘assesseees in default’. Therefore, the partners’ property in individual capacity cannot be proceeded with in connection with the tax dues of the firm [*Manohar Lal v CIT*, (1987) 34 Taxman 418, 422, 423 (All)].”.

Page 3976: section 222:

After line 26 from top, *add*,—

“Adjustment of assessee’s refund against tax dues of a foreign company—held not justified.—In the facts of *Mettur Chemicals & Industrial Corporation Ltd. v IAC* [(1984) 150 ITR 341 (Mad)], the adjustment of the refund due to the petitioner-assessee against tax due by a non-resident company, without treating the assessee as in default under section 201, was held not justified.”.

Page 3979: section 222:

On the subject “*Recovery proceedings against a company in liquidation*”, reference may also be made to *ITO v Official Liquidator*, (1985) 155 ITR 510 (Ker—FB).

Page 3979: section 222:

After line 6 of the paragraph titled “*Company’s tax arrears—whether recoverable from a director?*”, *add*,—

“Where the tax liability of a company is fastened upon its director by virtue of the provisions of section 179, issue of a tax recovery certificate against such director in respect of such tax liability is justified [*S. Hardip Singh Sandhu v TRO*, (1987) 166 ITR 759 (Punj)].”.

Page 3980: section 222:

After line 25 from top, *add*,—

“A recovery certificate issued by the Income-tax Officer continues to be effective till it is withdrawn or cancelled and/or the demand is satisfied in accordance with the provisions of the Act and Rules [*Himangshu Sekhar*

Chakravorty v TRC, (1987) 164 ITR 540, 548 (Gauh), special leave petition dismissed by the Supreme Court: (1987) 164 ITR (St.) 33 (SC)].”.

Pages 3984-3985: section 222:

On the subjects “*TRO’s power to recover interest*” and “*Realisation of costs and charges, etc.*”, reference may also be made to *Milan Kumar Mukherjee v Union of India*, (1984) 149 ITR 730 (Cal).

Pages 3989-3990: section 222:

At the end of the paragraphs titled “*Property held in benami*”, add,—

“Similarly, in *Bank of India v Union of India* [(1987) 167 ITR 668 (Del)], U had created an equitable mortgage in favour of the petitioner-bank by deposit of title deeds of an immovable property belonging to her and situated in New Delhi. The bank obtained a decree for sale of that property but before it could execute that decree, the Tax Recovery Officer attached that property in recovery proceedings against U’s husband. It was held that the Tax Recovery Officer had not brought on record any evidence to show that the property was held by U only as a *benamidar*. Therefore, the property belonging to U could not be attached for recovery of tax dues against her husband.”.

Page 3993: section 222:

At the end of the paragraph titled “*Attachment and sale of movable property*”, add,—

“Rule 26(1)(iii) empowers the Tax Recovery Officer to prevent payment of amount/rents in the hands of a third party which has become due for payment and does not empower to make any order regarding future rents. Further, that rule gives a choice to the person on whom a prohibitory order has been issued *either* to retain money or other movable property with him *or* to handover the same to the Tax Recovery Officer. That rule restrains such person from giving the same over to the defaulter [*A. Gopala Naidu v TRO*, (1987) Tax LR 1195, 1197-1198 (Karn)].

In *Kanakia Trading Co. v ITO* [(1987) 164 ITR 204 (Cal)], a property was mortgaged to a bank. The bank obtained a decree and on the bank’s application, a receiver was appointed by the court with a direction to sell that property. Property was sold free from all encumbrances by the receiver after obtaining permission from the Tax Recovery Officer. It was held that the Tax Recovery Officer had no jurisdiction to issue notices under rule 26(1)(i) of the Second Schedule to the tenants of that property so as to attach rents payable by them.”.

Page 3994: section 222:

At the end of the paragraphs titled “*Attachment and sale of immovable property*”, add,—

“Rule 48 empowers the Tax Recovery Officer to attach any immovable property of the defaulter. That rule does not provide that the value of the

property attached cannot be far more than the tax due. The main object of the attachment is to make the defaulter to pay the tax due to the department and get the property released [*A. Gopala Naidu v TRO*, (1987) Tax LR 1195, 1198 (Karn)].”.

Page 3995: section 222:

On the subject “*Attachment of immovables, whence effective?*”, reference may also be made to *S. Aiyadurai Nadar v T. R. Sakku Bai*, (1987) 168 ITR 161, 163 (Mad).

Page 3996: section 222:

After line 12 from top, *add*,—

“Recovery possible to the extent of the interest of the person concerned.—The recovery of tax dues can be effected from out of a particular property to the extent to which the defaulter had interest therein. If the defaulter had no interest in a particular property, no recovery is possible from out of that property in respect of the tax dues of the defaulter [*Deys Medical Stores Pr. Ltd. v Dhanya Kumar Dharamdas & Co.*, (1984) 148 ITR 165 (MP)].”.

Page 3998: section 222:

After line 13 of the paragraph titled “*Attachment against property already gifted by the certificate-debtor*”, *add*,—

“In *P. V. Thyagaraj v TRO* [(1987) 165 ITR 412 (Mad)], recovery proceedings started against a property (which was stated to be already gifted by the certificate-debtor) were challenged by filing a writ petition. It was held that the questions which were at issue required detailed investigation of facts which could not be undertaken in writ proceedings. Moreover, the petitioners had adequate alternative remedy before the Tax Recovery Officer under rule 11 of the Second Schedule. Therefore, the writ petition was not maintainable.”.

Page 3998: section 222:

At the end of the page, *add*,—

“Recovery from a property other than that liable to confiscation is possible.—In *Harinder Singh v ITO* [(1987) 166 ITR 763 (All)], special leave petition dismissed by the Supreme Court: (1987) 167 ITR (St.) 1 (SC)], in a search conducted in the residential premises and bank locker of the assessee, *inter alia*, primary gold was seized. This was retained for meeting tax liabilities of the assessee. The assessee requested for adjustment of its tax liabilities against the proceeds of the seized asset. The request was rejected by the Income-tax Officer and he issued a recovery certificate to recover the tax liabilities through Tax Recovery Officer by attachment of the house property of the assessee. It was held that since the Income-tax authorities were bound to assist the Gold Control authorities and were also liable to produce the primary gold seized before the

Gold Control authorities which were empowered to confiscate such gold, the steps taken by the Income-tax Officer to recover the tax dues of the assessee by attachment and sale of his house property were not unauthorised or illegal.

Suit by a third party possible if his/her property is attached for realisation of tax dues of an assessee.—See, at pages 5288-5289 of Vol. 6.”. **Page 3999: section 222:**

On the subject “*Bar to jurisdiction of civil courts*”, reference may also be made to *Milan Kumar Mukherjee v Union of India*, (1984) 149 ITR 730 (Cal).

Page 4001: section 222:

After line 3 from top, *add,—*

“An objection as to the absence of service of notice can be taken before the Tax Recovery Officer and he is bound to scrutinise the records and decide the objection [see, *Sunil Kumar Singh Deo v TRO*, (1987) 166 ITR 882 (Ori)]. In that case, the matter was remitted to the Tax Recovery Officer with a direction to determine the questions raised after giving the parties an adequate opportunity of hearing.”.

Page 4004: section 222:

After line 3 from top, *add,—*

“**Object of suit under rule 11(6).**—The language employed in rule 11(6) is *in pari materia* with the old rule 63† of Order 21, Civil Procedure Code. In this context, one has to consider the effect of the enquiry that has been made under Order 21, rule 58†, Civil Procedure Code, and the effect of the suit under Order 21, rule 63, Civil Procedure Code. The scope of the enquiry under Order 21, rule 58, Civil Procedure Code, is a limited one confined to the question of possession. A suit under Order 21, rule 63, Civil Procedure Code, is concerned not only with possession but also with title. The object of the Legislature in prescribing a suit by way of an appeal is to give the parties an opportunity of placing their respective cases fully before the court, because a summary investigation might not furnish sufficient material for a decision by an appellate court. In other words, the object of the suit is to establish the right which has been negated by the order on the claim petition and is, in substance, to set it aside. The order passed on the claim petition is subject to the result of the suit filed by the successful party under Order 21, rule 63, Civil Procedure Code [*ITO v B. Appa Rao*, (1987) 166 ITR 543, 546 (AP)]. In that case, the Tax Recovery Officer, accepting the claim of the defendants to the effect that on the basis of the factum of adoption and the execution of the wills five-

sixths of the property in question cannot be attached, confirmed attachment only with respect to one-sixth share of the property. The Income-tax Officer filed a suit under rule 11(6) for setting aside the order of the Tax Recovery Officer. On the point of burden of proof, it was held that the general plea that the person who approached the court (here the Income-tax Officer) has to prove cannot be accepted. The finding given in a summary proceeding (here before the Tax Recovery Officer) cannot be taken to cast the burden of proof on the other side (here the Income-tax Officer) who has no knowledge about the factum of adoption or the execution of wills. It is the defendants that have set up the adoptions and the wills and it is for them to prove and their claim about possession and title has to be established.”.

Page 4004: section 222:

At the end of the paragraph titled “*Conclusiveness or finality of the adjudication made by the TRC*”, add,—

“In *Union of India v Hindustan Embroidery Mills Pr. Ltd.* [(1987) 168 ITR 10 (Punj)], the order of the Tax Recovery Officer releasing the property attached accepting the objection that the property belonged to a trust was held to be valid one as the existence and validity of that trust have been finally upheld by the Appellate Tribunal.”.

Page 4010: section 222:

After line 12 of the paragraph titled “*Application to set aside a sale*”, add,—

“In *Ranbir Raj Kapoor v TRO* [(1986) 162 ITR 153 (Bom)], the assessee-defaulter was held not entitled to relief under rule 60 because he did not deposit the entire arrears of tax.”.

Page 4010: section 222:

On the subject “*Application u/r. 60(1), when cannot be made or prosecuted?*”, reference may also be made to *Ranbir Raj Kapoor v TRO*, (1986) 162 ITR 153 (Bom).

Page 4013: section 222:

Before line 9 from bottom, add,—

“In the facts of *Ranbir Raj Kapoor v TRO* [(1986) 162 ITR 153 (Bom)], the decision of the Tax Recovery Officer that the auction sale has become final was set aside and he was directed to dispose of the application under rule 61 on merits.”.

Page 4014: section 222:

At the end of the paragraphs titled “*Sale cannot be set aside except on any of the grounds covered by rule 60, 61 or 62*”, add,—

“In *Ram Ayodhya Rai v State of Bihar* [(1986) 159 ITR 634 (Pat)], it has been held that the mere fact that extension of time had been granted

for payment of the balance of the purchase price would not render the sale a nullity. Further, the defaulter cannot make a grievance that he had been compelled to pay a higher amount as interest because the certificate case remained pending for a longer period. The auction sale was held to be valid.”.

Pages 4017-4018: section 222:

On the subject “*Arrest and detention of the defaulter*”, reference may also be made to certain cases concerning analogous provisions of the Civil Procedure Code, 1908, and other enactments:

- (1) *Jolly George Varghese v Bank of Cochin*, AIR 1980 SC 470.
- (2) *Ram Narayan Agarwal v State of Uttar Pradesh*, AIR 1984 SC 1213.
- (3) *K. AL. RM. RM. Alagappan v Rajaguru & Co.*, AIR 1985 Mad. 353.

Page 4019: section 222:

At the end of the paragraph titled “*Partner, whether can be arrested for recovery of tax due by firm?*”, *add,—*

“In *Manohar Lal v CIT* [(1987) 34 Taxman 418, 423 (All)], notices issued under section 73 against the partners of the firm, without treating them ‘assesseees in default’, were held beyond the powers of the Tax Recovery Officer.”.

Page 4019: section 222:

Before line 5 from bottom, *add,—*

“**Appointment of receiver.**—One of the modes of recovery of tax is, as per section 222(1)(d), by way of appointing a receiver for the management of the assessee’s movable and immovable properties. Part IV (consisting of rules 69 to 72) of the Second Schedule to the 1961 Act and Part VII (consisting of rules 48 to 52) of the Income-tax (Certificate Proceedings) Rules, 1962, are relevant on the subject of appointment, powers and duties of a receiver.

In *Kalyan Mills Ltd. v Union of India* [(1987) 164 ITR 225 (SC)], on the request of the assessee-company, which was a managing agency company, garnishee notices under section 46(2) of the 1922 Act were issued to the managed company, Kalyan Mills Ltd., for recovery of the tax dues of the assessee-company. A garnishee notice under section 46(5A) of the 1922 Act was also issued to the managed company, Kalyan Mills Ltd. The managed company admitted its liability to the assessee-company towards managing agency commission. But, later on, the managed company raised unfounded counter-claims against the assessee-company. The Union of India filed a suit against the managed company. The civil court passed a decree for appointment of a receiver to realise the tax dues of the assessee-company from the managed company. It was held that in view of the counter-claims the machinery under section 46(5A) was no longer effective and

there was no option for the Union of India but to obtain adjudication from a civil court. Since no money decree could be passed against the managed company, the decree for appointment of a receiver so that the amount might be recovered and paid to the Union of India was properly made.”

Page 4020: section 222:

On the subject “*Priority for Government dues*”, reference may also be made to *Deys Medical Stores Pr. Ltd. v Dhanya Kumar Dharamdas & Co.*, (1984) 148 ITR 165 (MP).

Page 4020: section 222:

Lines 3-4 of the paragraph titled “*Priority for Government dues*”: The decision in *Somasundaram Mills Pr. Ltd. v Union of India* [(1969) 74 ITR 668 ((Mad))] has been reversed, on facts, in *Union of India v Somasundaram Mills Pr. Ltd.* [(1985) 152 ITR 420 (SC)].

Pages 4021-4023: section 222:

On the subject “*Private alienation void in certain cases—rule 16*”, reference may also be made to *S. Aiyadurai Nadar v T. R. Sokku Bai*, (1987) 168 ITR 161, 163 (Mad) [holding that after service of notice under rule 2, the court is debarred, under rule 16(1), from issuing any process against any property belonging to the defaulter in execution of a decree for payment of money]; *Mohd. Ibrahim Khan v Union of India*, (1985) 155 ITR 10 (AP) [holding that rule 16(2) declares any transfer of attached property to be void]. Cf. *Ag. ITO v Thankamma Parameswaran: Ag. ITO v Vasudevan Nair*, (1987) 164 ITR 719 (Ker).

Page 4022: section 222:

After line 26 from top, *add,—*

“In *Shyam Roy v Grindlays Bank Ltd.* [(1984) 150 ITR 263 (Cal)], a property was sold in auction sale in execution of a money decree. That sale was challenged on the ground that prior to such sale the Tax Recovery Officer had instituted recovery proceedings and, therefore, the auction sale was void by virtue of the provisions of rule 16(1) of the Second Schedule. The plaintiff also applied for temporary injunction. It was held that *status quo* of the property should be maintained till the hearing of the application for temporary injunction.”

Page 4028: section 222:

After serial No. 4, giving illustrative cases where the writ petitions were granted, *add,—*

“5. *Sunil Kumar Singh Deo v TRO*, (1987) 166 ITR 882 (Ori) [order of the TRO directing sale of property under attachment was challenged on the grounds of non-service of demand notice and without conducting proper enquiry about the ownership of the property, etc. The TRO’s order was vacated and the matter

was remanded to him with a direction to determine the questions raised after giving the parties an adequate opportunity of hearing].”.

Page 4029: section 222:

After serial No. 6, giving the illustrative cases in the facts whereof the writ petitions were dismissed, *add*,—

- “7. *Surinder Nath Kapoor v Union of India*, (1987) Taxation 85(3)-145 (Raj) [where an appeal was filed and was pending against the impugned order, the same was held to be an efficacious remedy under the Act and the writ petition was dismissed].
8. *Sohni Devi v CIT*, (1987) 168 ITR 308 (All) [where the TRO has, by a well-reasoned order, rejected the objections of the petitioner taken against the attachment of the house, the High Court found no error apparent on the face of the record and dismissed the writ petition].
9. *Dadala Ramanayya v TRO*, (1987) 168 ITR 266, 273 (AP) [where the petitioner challenged the jurisdiction of the Tax Recovery Officer after lapse of about 12 years, the High Court did not exercise its discretionary jurisdiction under Article 226 in view of the conduct of the assessee].

Also see, *Ajay Kumar Aggarwal v CIT*, SLP (Civil) No. 6041 of 1987: (1987) 167 ITR (St.) 2 (SC).”.

Page 4032: section 224:

On the subject “*Correctness or validity of the assessment cannot be disputed before the Tax Recovery Officer*”, reference may also be made to *Sohni Devi v CIT*, (1987) 168 ITR 308 (All).

Page 4033: section 224:

At the end of the paragraph titled “*Income-tax Officer may vary the amount of the certificate*”, *add*,—

“Section 224 empowers the Income-tax Officer to withdraw or correct any mistake, clerical or arithmetical, in the recovery certificate [*Himangshu Sekhar Chakravorty v TRC*, (1987) 164 ITR 540, 547 (Gauh), special leave petition dismissed by the Supreme Court: (1987) 164 ITR (St.) 33 (SC)]. In that case, the petitioner contended that the recovery certificate had been withdrawn or cancelled by the Income-tax Officer. Negating the contention, it was held, on facts, that there was no material to show that the Income-tax Officer withdrew or cancelled the recovery certificate.”.

Page 4033: section 224:

At the end of the paragraph titled “*TRO bound to follow instructions given by the ITO*”, *add*,—

“In other words, on withdrawal or cancellation of a recovery certificate

by the Income-tax Officer acting under section 224, the Tax Recovery Officer cannot continue with the recovery proceedings against an assessee [*Himangshu Sekhar Chakravorty v TRC*, (1987) 164 ITR 540 (Gauh), special leave petition dismissed by the Supreme Court: (1987) 164 ITR (St.) 33 (SC)].”.

Page 4041: section 226(1):

Before line 9 from bottom, *add*,—

“A plain construction of section 226(1) leads to the inevitable conclusion that although section 222 provides for recovery of the arrears of tax through the Tax Recovery Officer to whom a recovery certificate has been forwarded by the Income-tax Officer, section 226 provides other modes of recovery which may be adopted concurrently with proceedings under section 222 or, if it is, without any proceeding being taken under that section [*ITO v Manmohanlal*, (1987) 168 ITR 56, 60 (Ori), set aside on another point in *Manmohanlal v ITO*, (1987) 168 ITR 616 (SC)].”.

Page 4045: section 226(3):

After line 4 from top, *add*,—

“The question whether there was any subsisting relationship as contemplated by section 226(3)(i) between the person on whom a garnishee notice has been served and the assessee is a question of fact. Where the person on whom a garnishee notice has been served does not lead any evidence to show that there was no such subsisting relationship, he cannot seek any redress in a court of law [*Gupta Iron & Steel Rolling Mills v ITO*, (1985) Taxation 79(3)-1 (Punj)].

Property in the hands of a receiver.—A property in the hands of a receiver appointed by a court under Order 40, rule 1 of the Code of Civil Procedure, 1908, is exempt from judicial process, except of course to the extent permitted by the appointing court. In respect of such property the receiver is *custodia legis* [see, *Kanhaiyalal v Dr. D.R. Banaji*, AIR 1958 SC 725; *Bholanath Naik v Krupasindhu Naik*, AIR 1964 Ori. 215; *ITO v Bichitrananda Kar*, (1986) 29 Taxman 329 (Ori)]. In *ITO v Bichitrananda Kar* [(1986) 29 Taxman 329 (Ori)], the Income-tax Officer recovered certain amount by issuing garnishee notice under section 226(3) to a particular person. In a suit, it was held by the subordinate judge that such attachment was illegal as that particular person was *custodia legis*. On revision, the matter was remanded to the subordinate judge because the issues were decided in the absence of a valuable piece of evidence which was withheld from the subordinate judge.”.

Page 4045: section 226(3):

At the end of the paragraph titled “*Rent payable may be the subject-matter of a garnishee notice*”, *add*,—

“However, in *Kanakia Trading Co. v ITO* [(1987) 164 ITR 204 (Cal)],

a property was mortgaged to a bank. The bank obtained a decree and a receiver was appointed by the Court. The property was sold by the receiver to the petitioner after obtaining permission of the Tax Recovery Officer. The property was purchased by the petitioner free from all encumbrances. It was held, on facts, that after the sale was completed, the income-tax authorities and the Tax Recovery Officer had no jurisdiction to issue notices under section 226(3) to the tenants of that property so as to attach rents payable by them.”.

Page 4056: section 226(4):

In line 15 of the paragraph titled “*Claiming money in court—section 226(4)*”, before the words “There were no such”, *add*,— “A perusal of sections 222 and 226 clearly shows that the Tax Recovery Officer has nothing to do with an application under section 226(4) made by the Income-tax Officer to a Court in which there is money lying to the credit of the assessee in default. If such an application is made, it is certainly open to the Court to determine as to whether there has been a proper notice of demand served on the decree-holder (assessee in default) according to law. It is only after the Court is satisfied of this that the Court can proceed to pay over the amount demanded to the Income-tax Officer.

It is settled by authority long accepted that tax can be recovered from an assessee only when it becomes a debt due from him, and that becomes a debt due when a notice of demand calling for payment of the tax has been served on the assessee. If an assessee objects to the recovery proceeding taken under section 226(4) on the ground that there has been no valid service of a notice of demand and that, therefore, no debt is due, the Court must decide the objection, and if it upholds the objection it cannot permit recovery of the tax claimed [*Manmohanlal v ITO*, (1987) 168 ITR 616, 618 (SC), *setting aside*, *ITO v Manmohanlal*, (1987) 168 ITR 56 (Ori)]. The Supreme Court remanded the matter to the High Court to determine the civil revision application afresh in the light of the observations made in the judgment and keeping in mind the limits of revisional jurisdiction.”.

Page 4072: section 230A:

At the end of the paragraph titled “*Relevant rules*”, *add*,—

“Form No. 34A prescribed for making an application for issue of a tax clearance certificate under section 230A is consistent with that section [*Srimathi Indira v ITO*, (1984) 150 ITR 351 (Karn)].”.

Page 4074: section 230A:

On the subject “*Provisions have application to voluntary transfers only*”, reference may also be made to *Sankar Prasad Dev Burman v Indumati Sahoo*, (1985) 154 ITR 826 (Ori); *Kanakia Trading Co. v ITO*, (1987) 164 ITR 204 (Cal).

Page 4074: section 230A:

After the paragraph titled "*No appeal*", add,—

"Situations wherein certificate u/s. 230A can be issued.—It is evident from a reading of section 230A(1) that a certificate under that section can be issued in three situations, viz., (i) where the applicant has paid all his existing liabilities under the Income-tax Act and other Acts specified in clause (a) of that sub-section; (ii) where the applicant has made satisfactory provision for payment of all such existing liabilities; (iii) where the registration of the document will not prejudicially affect the recovery of any existing liability under any of the Acts mentioned in clause (a).

Where an attachment has been effected of the assessee's property for recovery of income-tax arrears, he cannot be allowed to say that he will make a satisfactory provision for payment of his existing liabilities and that, thereupon, a certificate must be issued to him to enable him to transfer the attached property. Rule 16(2) of the Second Schedule to the 1961 Act prohibits any form of transfer during the subsistence of attachment [*Mohd. Ibrahim Khan v Union of India*, (1985) 155 ITR 10, 17-18 (AP)]."

Page 4075: section 230A:

After line 2 from top, add,—

"Refusal must be by a speaking order.—Ordinarily, an order refusing a certificate under section 230A must be a speaking order, otherwise such an order would violate the principles of natural justice and is liable to be quashed by the High Court. At the same time, since the object of the principles of natural justice is to prevent failure of justice, the court would not interfere unless violation of principles of natural justice has resulted in the failure of justice, or has resulted in prejudice to a citizen [*Mohd. Ibrahim Khan v Union of India*, (1985) 155 ITR 10, 14-15 (AP)]. In that case, the order refusing the certificate did not give any reasons for such refusal. But, the High Court did not think it proper to quash that order and remit the matter to the Income-tax Officer because the petitioner, in that case, was not entitled to a certificate on the facts stated in the writ petition itself. Therefore, it was held that a direction to the Income-tax Officer to reconsider the matter would be a futile exercise, and the discretionary jurisdiction of the High Court under Article 226 of the Constitution would not be exercised to issue such futile orders."

Page 4075: section 230A:

After line 17 from top, add,—

"Who can apply for a certificate?—The words 'such person' in section 230A(1)(a) and the words 'the person' in section 230A(2) refer to the transferor or the person creating interest in favour of another. Those words cannot be read as any and every person comprehending both the 'transferor' and the 'transferee'. Section 230A requires the Income-tax Officer to issue a certificate only to the person that proposes to transfer or create an interest in favour of another and no other person. If the legislature in its wisdom

creates a right on the 'transferor' only, the court cannot create that right in favour of the 'transferee' also. Any such attempt will really amount to legislation in the guise of interpretation, which is not permissible [*Srimathi Indira v ITO*, (1984) 150 ITR 351, 354 (Karn), dissenting from *Mrs. Helen Jayaraj v Sub-Registrar of Mylapore*, (1983) 139 ITR 492 (Mad)]. In the facts of Karnataka case, the Income-tax Officer was held justified in rejecting the application under section 230A made by the transferee (vendee) and, therefore, the writ petition was dismissed.”.

Page 4081: section 231:

In lines 11-12 from top, after “121 ITR 476 (Cal)].”, *add*,— “An order under section 201 passed after the expiry of the period of limitation prescribed in section 231 has been held to be barred by limitation [*Traco Cable Co. Ltd. v CIT*, (1987) 166 ITR 278 (Ker)]. Also see, *CIT v Punjab National Bank Finance Ltd.*, SLP (Civil) No. 4919 of 1982: (1985) 151 ITR (St.) 15 (SC).”.

In the facts of *Himangshu Sekhar Chakravorty v TRC* [(1987) 164 ITR 540 (Gauh)], the recovery proceedings were held to have been commenced well within the period of limitation. Also see, *T. Lakshmikutty Amma v Addl. Ag. ITO*, (1987) 163 ITR 336 (Ker).”.

Page 4081: section 231:

After line 22 from top, *add*,—

“Where the recovery proceedings are commenced after the expiry of the period of limitation prescribed in that behalf, the same are time barred [Cf. *V. Kunhikannan v Ag. ITO*, (1981) 132 ITR 29 (Ker)].”.

Page 4088: section 235:

At the end of the paragraph titled “1922 Act”, *add*,—

“Section 235, which dealt with relief in relation to agricultural income-tax attributable to dividend, referred to the ‘amount of dividend’. Accordingly, relief under section 235 was to be calculated on the amount of the dividend received by a shareholder. The relief could not be given only on that part of the dividend which was reckoned in computing the total income of the shareholder [*CIT v Devenport & Co. Pr. Ltd.*, (1986) 158 ITR 348, 352-53 (Cal)].”.

Page 4094: section 236A:

At the end of the paragraphs titled “Legislative amendments”, *add*,—

“Section 236A has further been amended by section 74(c)(vi) of the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The amendment is consequential to the omission, by that Act, of section 104, with effect from 1st April, 1988.”.

Page 4100: section 237:

After line 3 from top, *add*,—

“High Courts have power under article 226, for the purpose of enforcement of fundamental rights and statutory rights, to make consequential

orders for repayment of money realised by Government without the authority of law [*Shri Vallabh Glass Works Ltd. v Union of India*, (1985) 155 ITR 560, 566 (SC)].”.

Page 4100: section 237:

After serial No. 6, listing the cases where writ for refund was *not* granted, *add*,—

“7. *S. Sundaram v ITO*, (1987) 163 ITR 662 (Karn).

Also see, *Saroj Kumar Maheshwari v Hindustan Motors Ltd.*, (1985) 154 ITR 363 (Cal).”.

Page 4100: section 237:

After serial No. 8, listing the cases where writ for refund was granted, *add*,—

“9. *Shri Vallabh Glass Works Ltd. v Union of India*, (1985) 155 ITR 560 (SC).

10. *Hari Nandan Agarwal v ITO*, (1986) 159 ITR 816 (All).

11. *S. Sundaram v ITO*, (1987) 163 ITR 662 (Karn).

12. *Burmah Oil Co. Ltd. v ITO*, (1987) 165 ITR 264 (Cal).

13. *Bermalt (India) Pr. Ltd. v Secretary, Government of India*, (1987) Tax LR 1801 (Del).”.

Pages 4100-4101: section 237:

On the subject “*Delay or laches in filing a writ petition, how far fatal*”, reference may also be made to *Bermalt (India) Pr. Ltd. v Secretary, Government of India*, (1987) Tax LR 1801 (Del).

Pages 4101-4102: section 237:

On the subject “*Tax paid under a mistake refundable*”, reference may also be made to *CST v Auraiya Chamber of Commerce*, (1987) 167 ITR 458 (SC); *Hindustan Steel Ltd. v Indian Cable Co. Ltd.*, (1984) Tax LR (NOC) 115 (Cal).

Page 4106: section 237:

Before line 5 from bottom, *add*,—

“The above circular has been held to be binding also on the Commissioner of Income-tax in *Parekh Bros. v CIT* [(1984) 150 ITR 105 (Ker)].”.

Page 4108: section 238:

At the end of the paragraphs titled “*Persons entitled to claim refund*”, *add*,—

“In the facts of *Frank Beaton v CIT* [(1985) 156 ITR 16 (Del)], the excess amount of tax paid by the employer to the income-tax department was held refundable to the employer and not the employee.”.

Page 4114: section 240:

On the subject, "*Effect of set-aside of assessment on amount already paid*", reference may also be made to *Hari Nandan Agarwal v ITO*, (1986) 159 ITR 816 (All).

Page 4115: section 240:

Before the text of section 241, *add*,—

"However, an employee has been held not entitled to get refund of the correct amount of tax deducted at source by his employer and paid to the credit of the Central Government, even though regular assessment of the employee has not been completed in pursuance of the return filed by the employee within the prescribed period of limitation in that behalf [*S. Sundaram v ITO*, (1987) 163 ITR 662 (Karn)].".

Page 4116: section 241:

After line 18 from top, *add*,—

"A perusal of section 241 shows that the power to withhold refund cannot be exercised merely because some proceeding under the Income-tax Act is pending. Before withholding the refund, the Income-tax Officer has also to form an opinion that the grant of refund is likely to affect the revenue adversely. The section does not postulate that the grant of refund during the pendency of proceedings under the Act is an act which necessarily affects the revenue adversely. The opinion whether the grant of refund during the pendency of some proceedings under the Act would adversely affect the interest of the revenue will depend upon the facts and circumstances of each case [*Leader Valves Pr. Ltd. v CIT*, (1987) 167 ITR 542 (Punj); *Hansa Agencies Pr. Ltd. v CIT*, (1987) 33 Taxman 116 (Punj); *Suri Sons v CIT*, (1987) 33 Taxman 118 (Punj)]. In these cases, it has been held that where the refund has become due to the assessee on annulment of its assessment order, it is not right on the part of the Income-tax Officer to withhold, under section 241, such refund on the ground that further proceeding challenging such annulment is pending before the higher forum.".

Page 4121: section 243:

After line 8 from top, *add*,—

"**Liability to interest, when arises?**—Under section 243, the income-tax department is liable to pay interest on delayed refund. Unless there is any liability to refund which has been delayed, the question of payment of interest would not arise at all. There is no liability on the department to pay any interest on the sum wrongly deducted at source by the employer from the payments made to the employee and deposited with the department [*Saroj Kumar Maheshwari v Hindustan Motors Ltd.*, (1985) 154 ITR 363, 370-71 (Cal)].".

Page 4123: section 244:

At the end of the paragraph titled "*Provisions of section 244(1)*", *add,—*

"The liability to pay interest under section 244(1) is absolute. The Income-tax Officer, by postponing the quantification of the amount refundable as a result of the appellate order, etc., cannot extend the period of limitation of three months prescribed under section 244(1) [Cf. *Trustees of H. E. H. The Nizam's Miscellaneous Trust v CWT*, (1984) 150 ITR 423 (AP)].

Also see, *S. A. Kadre v Binod Mills Co. Ltd.*, (1985) 20 Taxman 407 (Bom)."

Page 4125: section 244:

After line 30 from top, *add,—*

"In *CIT v Bowater Corporation Ltd* [(1986) 161 ITR 280 (Cal)], interest was awarded under section 244(1A) by the Income-tax Officer on refund of excess tax withheld by him under section 241. Rectification proceedings were initiated for withdrawing such interest on the ground that the assessee was entitled to interest only under section 244(2). It was held that it was a matter of debate whether the special benefit granted under section 244(1A) was intended to be curtailed by sections 241 and 244(2). In such a case, two views were conceivable. Therefore, the rectification proceedings were not valid."

Page 4128: section 244:

At the end of the paragraph titled "*Assessment completed before 1-4-1962 but refund becoming due on or after 1-4-1962—interest is payable under section 244*", *add,—*

"However, in *Shyam Sunder Kabra v S. M. Nadkarni* [(1985) 155 ITR 500 (Bom)], the original assessment was made under the 1922 Act provisions. That order was set aside by the first appellate authority. Fresh assessment order was passed under the 1922 Act provisions after coming into force of the 1961 Act. The assessee was held not entitled to interest on the amount of refund resulting from the fresh assessment order because the provisions of section 297(2)(i) would not be attracted.

No appeal.—In *CIT v H. V. Mirchandani* [(1986) 161 ITR 800 (Karn)], the assessee claimed interest under section 244(1A) on a refund resulting for the first time from a rectification order. The claim was rejected by the Income-tax Officer. It was held that the assessee had no right of appeal against the determination of interest under section 244(1A)."

Page 4129: section 245:

After line 5 of the paragraph titled "*Set-off of refund against arrears of tax*", *add,—*

"Where such set off of refund against arrears of tax is effected without giving intimation to the assessee concerned, the action has been held to be

wholly illegal. Section 245 clearly requires a previous intimation of the proposed action for adjustment and not a simultaneous intimation [*A. N. Shaikh v Suresh B. Jain*, (1987) 165 ITR 86 (Bom), *affirming*, *Suresh B. Jain v A. N. Shaikh*, (1987) 165 ITR 151 (Bom)].”.

Page 4136: section 245A:

After line 4 from top, *add*,—

“Newly substituted section 245A.—A new section 245A has been substituted for the then existing section 245A by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987. The newly-substituted section 245A has coined definitions of the expressions ‘Bench’, ‘case’, ‘Chairman’, ‘income-tax authority’, ‘Member’, ‘Settlement Commission’ and ‘Vice Chairman’. The then existing section 245A had coined definitions of two expressions only, namely, ‘case’ and ‘income-tax authority’.”.

Page 4136: section 245A:

At the end of the paragraphs titled “*Case*”, *add*,—

“As a result of the substitution of section 245A, by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987, a new definition of the expression ‘case’ has been coined in clause (b) of section 245A.”.

Page 4138: section 245A:

At the end of the paragraphs titled “*Income-tax authority*”, *add*,—

“As a result of the substitution of section 245A by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987, the definition of the expression ‘income-tax authority’ has been coined in clause (d) of section 245A.”.

Page 4139: section 245B:

At the end of the paragraphs titled “*Settlement Commission—constitution of*”, *add*,—

“Subsequent legislative amendments.—I. *The Taxation Laws (Amendment and Miscellaneous Provisions) Act*, 1986 (46 of 1986).—By this Act,—

- (i) section 245B(2) has been amended;
- (ii) section 245B(2A) has been omitted;
- (iii) opening portion of section 245B(3) has been amended;
- (iv) the first proviso to section 245B(3) has been amended; and
- (v) the second proviso to section 245B(3) has been omitted.

The scope and effect of all these amendments have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under:—

‘(viii) *Amendments to reorganise the Settlement commission.*—11.1 As per the provisions of section 245B(2) of the Income-tax Act, the Settlement Commission consists of a Chairman and two other members. In view of the heavy workload of the Settlement Commission and in the interest of

early finalisation of cases, it has been provided by the Amending Act that the Settlement Commission shall consist of a Chairman and as many Vice-Chairman and other members as the Central Government thinks fit. Section 245B(2A) providing for the contingency when the post of one or the other member of the Settlement Commission as presently constituted, is vacant has become irrelevant and hence has been omitted. Similarly, section 245D(5) being a provision subject to section 245B(2A) has also been omitted. In section 245B(3) which provides for the appointment of the Chairman and members of the Commission, the Amending Act has included Vice-Chairman also for this purpose. Further, the second proviso in section 245B(3) enabling any two members of the Central Board of Direct Taxes to serve as members of the Settlement Commission has now become irrelevant and has been omitted.

11.2 The Amending Act has further substituted new sub-sections (5), (6) and (7) in section 245F of the Income-tax Act. It has been provided that the powers and functions of the Settlement Commission may be exercised or discharged by Benches constituted by the Chairman of the Settlement Commission from amongst the members thereof. Such a Bench shall consist of three members one of whom shall be the Chairman or a Vice-Chairman. The Settlement Commission shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Benches shall hold their sittings. Necessary amendments to the Settlement Commission Procedure Rules[†] will be made accordingly.

11.3 The provisions shall come into force with immediate effect.’

II. The Finance Act, 1987 (11 of 1987).—By this Act, section 245B(1) has been amended with effect from 1st June, 1987. The amendment is consequential to the introduction, by that Act, of the definition of the expression ‘Settlement Commission’ in section 245A(f).”.

Page 4139: new sections 245BA to 245BD:

Before the text of section 245C, *add*,—

“New sections 245BA, 245BB, 245BC and 245BD.—By the Finance Act, 1987 (11 of 1987), four new sections, namely:—

- (1) section 245BA, relating to jurisdiction and powers of Settlement Commission,
- (2) section 245BB, concerning Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances,
- (3) section 245BC, relating to power of Chairman to transfer cases from one Bench to another, and

[†]See, the Income-tax Settlement Commission (Procedure) Rules, 1987, at pages 6631 to 6634, *post*.

(4) section 245BD, concerning decision to be by majority, have been inserted with effect from 1st June, 1987.

The scope and effect of newly-inserted sections 245BA to 245BD and 245HA, as also of amendments to sections 245C, 245D, 245F, 245H and 245K, have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

*'Modification of provisions relating to settlement of cases.—*41.1 Chapter XIXA of the Income-tax Act deals with the entire scheme for settlement of cases. With a view to ensure the functioning of a Bench in certain situations which have so far prevented it from discharging its powers, the Finance Act, 1987, has introduced new sections 245BA, 245BB and 245BC. In case the Chairman, Vice-Chairman or any of the Members of a Bench is unable to discharge his functions, for whatever reasons, the remaining two persons will now be competent to constitute a Bench and pass orders on matters covered by applications for settlement. In such a situation, the Senior Member will preside over the Bench. Where a presiding officer, looking to the nature of a case, considers that it should be heard by a Bench consisting of 3 Members, he may make a reference in this regard to the Chairman for transfer to such Bench as the Chairman deems fit. Where there is a difference of opinion between the Members of a Bench, the majority decision will prevail. Where the Members are equally divided, they will refer the points of difference to the Chairman, who will either hear the point(s) himself, or refer the point(s) for hearing by one or more of the other members of the Settlement Commission. The Finance Act, 1987, has conferred powers on the Central Government to authorise a Vice-Chairman to act as Chairman in certain situations.

41.2 The experience of the Department has been that when evasion of tax is detected in a case, the assessee deliberately omits to file tax returns and makes an application to the Settlement Commission, so as to escape penalty for concealment. Proviso to section 245C(1) has, therefore, been amended so that no application can be made to the Settlement Commission unless the assessee furnishes the return required to be filed under the Act.

41.3 The Finance Act, 1987, has rationalised the mode of computation of additional amount of income-tax payable, in relation to the income disclosed in the application for settlement. Under the existing provisions of clause (iii) of sub-section (1B) of section 245C, where an assessment has been completed, the additional amount of tax payable is calculated by aggregating the tax assessed and tax on disclosed income. The Finance Act, 1987, provides that in such a situation the additional amount of tax payable will be worked out on the returned income *plus* the income disclosed before the Settlement Commission. This gets over a situation, where for example the returned income is Rs. 1 lakh, the assessed income is Rs. 10 lakhs and disclosed income is Rs. 5 lakhs. In a case like this, as per the existing provisions the assessee would have to pay tax on total income of Rs. 15 lakhs (Rs. 10 lakhs as assessed & Rs. 5 lakhs as disclosed before the Settlement

Commission). The Finance Act, 1987, provides that the assessee will have to pay tax on Rs. 6 lakhs.

41.4 Presently, the Settlement Commission has absolute powers of granting immunity to any person from being prosecuted. The Finance Act, 1987, by inserting proviso to section 245H(1), precludes the Commission from granting immunity in cases where prosecution has been launched, prior to the date of receipt of application for settlement. By inserting a new sub-section (1A) in section 245H, it has also been provided that any immunity granted by the Commission to any person shall stand withdrawn on failure of such person to pay taxes, etc., within the time allowed as per the order of settlement or on failure of such a person to comply with any other condition subject to which the immunity is granted.

41.5 As a measure of further rationalisation, the Finance Act, 1987, empowers the Settlement Commission to re-open past assessments upto a period of 10 years as against 8 years under the existing provisions. The Commission has also been invested with the powers to send a case back to the Income-tax Officer if the assessee does not co-operate. In such cases the Income-tax Officer will dispose of the case in accordance with the provisions of the Act, as if no application under section 245C had been made.

41.6 Corresponding amendments in Chapter VA (sections 22A to 22M) of the Wealth-tax Act, dealing with settlement of cases in respect of wealth-tax have also been effected.

41.7 These amendments will come into force with effect from 1st June, 1987.

Notification under section 245BA.—In exercise of the powers conferred by sub-section (6) of section 245BA of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies New Delhi as the place at which the principal Bench, and Bombay as the place at which the additional Bench, of the Income-tax Settlement Commission shall ordinarily sit [*Notification No. SO 569(E), dated 10th June, 1987*].”.

Page 4141: section 245C:

Before the paragraph titled “*Application for settlement*”, add,—

“**1987-amendments.**—By the Finance Act, 1987 (11 of 1987), section 245C has been amended—

—by substituting a new proviso to section 245C(1) for the then existing proviso, and

—by substituting sub-sections (1B) and (1C) of section 245C for the then existing sub-sections (1B) and (1C),

with effect from 1st June, 1987.

For the scope and effect of all these amendments to section 245C, reference may be made to paragraphs 41.1 to 41.7 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6627 to 6628, *ante*.”.

Page 4142: section 245C:

After line 13 from top, *add,—*

“It may be noted that the proviso to section 245C(1) has been substituted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.”.

Pages 4147-4148: section 245C:

At the end of the paragraphs titled “*Calculation of the additional amount of income-tax payable*”, *add,—*

“It may be noted that sub-sections (1B) and (1C) of section 245C have been substituted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.”.

Page 4148: section 245C:

Before line 4 from bottom, *add,—*

“**Filing of settlement application u/s. 245C—effect of.**—The jurisdiction of the assessing authority is not in any way fettered merely because the assessee has filed a settlement application under section 245C [*Vinod Kumar Didwania v ITO*, (1986) 159 ITR 91, 98 (Mad)]. In other words, there is no bar on the Income-tax Officer from proceeding with the assessment in any pending case merely because an application for settlement has been preferred to the Settlement Commission in relation to that case. The Act does not contemplate stay of assessment proceedings during the period when the Settlement Commission is deciding whether to proceed or not to proceed with an application for settlement [*Deen Dayal Didwania v Union of India*, (1986) 160 ITR 12 (Del)]. No doubt, after an application for settlement has been allowed to be proceeded with under section 245D, the Settlement Commission shall have, under section 245F(2), exclusive jurisdiction over matters before it.”.

Page 4152: section 245D:

At the beginning of the page, *add,—*

Post-1984 amendments.—I. *The Finance Act, 1985.*—By this Act, section 245D(2A) has been amended, with retrospective effect from 1st October, 1984.

The scope and effect of such amendment have been elaborated in the following portion of the departmental circular No. 421, dated 12th June, 1985, as under:—

‘Clarification regarding payment of income-tax in case of application to the Settlement Commission.—41. Under the provisions of sub-section (2A) of section 245D, as inserted by the Taxation Laws (Amendment) Act, 1984, the applicant is required to pay the additional amount of income-tax payable on the income disclosed in the application within 35 days of the receipt of a copy of the order passed by the Settlement Commission. The relevant provision has been amended by the Finance Act, 1985, to clarify that the assessee shall be required to pay the additional amount of income-

tax payable on the income disclosed in the application to the Settlement Commission only if the Settlement Commission passes an order under sub-section (1) of section 245D allowing the application for settlement to be proceeded with. The amended provision takes effect retrospectively from October 1, 1984, that is, from the date the said sub-section was inserted by the Taxation Laws (Amendment) Act, 1984.’

II. The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.—By this Act, section 245D(5) has been omitted, with effect from 10th September, 1986. The omission is consequential to the omission, by that Act, of section 245C(2A).

III. The Finance Act, 1987.—By this Act, a new sub-section (5) has been inserted in section 245D, sub-sections (6) and (8) have been amended, all with effect from 1st June, 1987.

For the scope and effect of all these amendments to section 245D, reference may be made to paragraphs 41.1 to 41.7 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6627 to 6628, *ante*.”

Page 4153: section 245D:

After line 18 from top, *add*,—

“In *CIT v D. C. Kothari* [SLP (Civil) Nos. 6086-6090 of 1984: (1986) 162 ITR (St.) 56], their Lordships of the Supreme Court, by an order dated 29-9-1986, has dismissed the Commissioner’s special leave petition against an order dated 30-3-1983 of the Settlement Commission rejecting objections by the Commissioner to the Commission proceeding with the settlement, observing: ‘Inasmuch as the Commissioner’s order is to be processed for settlement, we see no reason why we should interfere at this stage. The special leave petitions are rejected.’

High Court not to direct the Commission to deal with settlement application expeditiously.—Section 245D gives jurisdiction to the Settlement Commission to proceed with a settlement application or to reject the same. The High Court has no jurisdiction to interfere and direct the Settlement Commission to deal with the settlement application expeditiously [*Deen Dayal Didwania v Union of India*, (1986) 160 ITR 12 (Del)].”.

Page 4153: section 245D:

Before line 10 from bottom, *add*,—

“It may be noted that section 245D(2A) has been amended by the Finance Act, 1985 (32 of 1985), with retrospective effect from 1st October, 1984.”.

Pages 4156-4157: section 245D:

At the end of the paragraphs titled “*Consideration and disposal by all the members*”, *add*,—

“It may be noted that the then existing section 245D(5) was omitted by

the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986. Thereafter, a new sub-section (5) has been inserted in section 245D by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.”.

Page 4157: section 245D:

After line 8 of the paragraph titled “*Contents of the final order*”, *add,—*

“It may be noted that section 245D(6) has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.”

Page 4159: section 245D:

Before the text of section 245E, *add,—*

“It may be noted that section 245D(8) has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.”.

Page 4160: section 245E:

At the end of the paragraph titled “*Extended jurisdiction*”, *add,—*

“The existing proviso to section 245E has been substituted by a new proviso by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987. For the scope and effect of so-substituted proviso to section 245E, reference may be made to paragraphs 41.1 to 41.7 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6627 to 6628, *ante*.”.

Page 4161: section 245F:

After the text of section 245F, *add,—*

“Post-1984 amendments.—I. *The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.*—By this Act, for sub-section (5) of section 245F, sub-sections (5), (6) and (7) were substituted, with effect from 10th September, 1986.

II. *The Finance Act, 1987.*—By this Act, sub-section (3) of section 245F has been amended by omitting the words ‘or by way of advance tax’ therefrom and sub-sections (5) and (6) of that section have been omitted, with effect from 1st June, 1987. The omission of sub-sections (5) and (6) is consequential to the insertion, by that Act, of a new section 245BA.”.

Page 4162: section 245F:

After line 5 of the paragraph titled “*Power to regulate its own procedure*”, *add,—*

“With effect from 10th September, 1986, the provisions of the above section 245F(5) have been carried to section 245F(7) in a modified form.”.

Pages 4162-4165: section 245F:

For the Income-tax Settlement Commission (Procedure) Rules, 1976, *substitute,—*

‘INCOME-TAX SETTLEMENT COMMISSION (PROCEDURE) RULES, 1987

Notification No. GSR 537(E), dated 1st June, 1987†.—In exercise of the powers conferred by sub-section (7) of section 245F of the Income-tax Act, 1961 (43 of 1961), and in supersession of the Income-tax Settlement Commission (Procedure) Rules, 1976, except as respects things done or omitted to be done before such supersession, the Income-tax Settlement Commission hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Income-tax Settlement Commission (Procedure) Rules, 1987.

(2) They shall come into force on the 1st day of June, 1987.

2. Definitions.—In these rules, unless the context otherwise requires,—

(i) “Act” means the Income-tax Act, 1961 (43 of 1961);

(ii) “applicant” means a person who makes an application to the Commission under sub-section (1) of section 245C to have a case relating to him settled;

(iii) “authorised representative” means—

(a) in relation to an applicant, except where such applicant is required under any of the provisions of Chapter XIXA of the Act to attend in person, a person who would be entitled to represent him before any income-tax authority or the Appellate Tribunal under section 288;

(b) in relation to a Commissioner, a person—

(A) authorised by the Commissioner in writing; or

(B) duly appointed by the Central Government by notification in the Official Gazette as authorised representative, to appear, plead or act for the Commissioner in any proceedings before the Commission;

(iv) “Commission” means the Income-tax Settlement Commission constituted under sub-section (1) of section 245B and includes, where the context so requires, any Bench exercising or discharging the powers or functions of the Commission;

(v) “Secretary” means a Secretary of the Commission and includes a Deputy Secretary and an Administrative Officer of the Commission;

(vi) “Section” means a section of the Act;

(vii) “settlement application” means an application made by a person to the Commission under sub-section (1) of section 245C to have a case relating to him settled;

(viii) all other words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Language of the Commission.—(1) All pleadings before the Commission may, at the option of the applicant, be in Hindi or in English.

(2) All orders and other proceedings of the Commission may, at the option of the Commission, be in Hindi or in English.

4. Signing of notices, etc.—(1) Any requisition, direction, letter, authorisation, order or written notice to be issued by the Commission shall be signed by the Chairman or a Vice-Chairman or any other Member of the Commission or by a Secretary.

(2) Nothing in sub-rule (1) shall apply to any requisition or direction which the Commission may, in the course of the hearing, issue to an applicant or a Commissioner or an authorised representative, personally.

† Published in the Gazette of India, Extraordinary, Part II, section 3(i), dated 1st June, 1987, serial No. 288.

5. Procedure for filing settlement application.—(1) A settlement application shall be presented by the applicant in person or by his agent to the Secretary at the headquarters of the Commission at New Delhi or of the Bench within whose jurisdiction his case falls or to an officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary, or to such officer.

(2) A settlement application sent by post under sub-rule (1) shall be deemed to have been presented to the Secretary or the officer authorised by the Secretary, on the day on which it is received in the office of the Commission.

6. Commissioner's report, etc., under section 245D(1).—On receipt of a settlement application, a copy of the said application (other than the Annexure and the statements and other documents accompanying such Annexure) shall be forwarded by the Commission to the Commissioner with the direction to furnish his report under sub-section (1) of section 245D within thirty days of the receipt of the said copy of the application by him or within such further period as the Commission may specify.

7. Filing of affidavit.—Where a fact which cannot be borne out by, or is contrary to, the record relating to the case is alleged in the settlement application (including the Annexure and the statements or other documents accompanying such Annexure), it shall be stated clearly and concisely and supported by a duly sworn affidavit.

8. Commissioner's further report.—Where an order is passed by the Commission under sub-section (1) of section 245D allowing the settlement application to be proceeded with, a copy of the Annexure to the said application, together with a copy of each of the statements and other documents accompanying such Annexure, shall be forwarded to the Commissioner alongwith a copy of the said order with the direction that the Commissioner shall furnish a further report within ninety days of the receipt of the said Annexure (including the statements and other documents accompanying it) or within such further period as the Commission may specify.

9. Date and place for hearing of application to be notified.—On receipt of the Commissioner's further report under rule 8, the Commission shall notify to the applicant and the Commissioner the date and place of hearing of the application.

10. Sitting of Bench.—A Bench shall hold its sittings at its headquarters or such other place as it may consider convenient.

11. Powers of Bench.—A Bench shall dispose of such settlement applications or matters arising therefrom as the Chairman may by general or special order direct.

12. Filing of authorisation.—An authorised representative appearing for the applicant at the hearing of an application shall file before the commencement of the hearing a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is at the time employed.

13. Verification of additional facts.—Where in the course of any proceedings before the Commission any facts not contained in the settlement application (including the Annexure and the statements and other documents accompanying such Annexure) are alleged, they shall be submitted to the Commission in writing and shall be verified in the same manner as provided for in the settlement application.

14. Proceedings not open to the public.—The proceedings before the Commission shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Income-tax Department or the authorised representatives) shall, without the permission of the Commission, remain present during such proceedings.

15. Adjournment of hearing of application.—The Commission may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application.

16. Special provisions in respect of settlement applications made before 1-10-1984.—(1) Where, in respect of a settlement application made before the 1st day of October, 1984, an order is passed by the Commission under sub-section (1) of section 245D allowing the application to be proceeded with, a notice shall be issued by the Commission to the applicant requiring him to furnish in quintuplicate—

- (a) a full and true statement of facts regarding the matters to be settled (including the manner in which any income disclosed or proposed to be disclosed by the applicant has been derived); and where the settlement involves determination of income, accompanied with annexures containing—
 - (i) computation of total income of the applicant for the assessment year or years to which the settlement application relates, in accordance with the provisions of the Act;
 - (ii) copies of manufacturing account or trading account or both, as the case may be; profit and loss account or income and expenditure account or any other similar account, as the case may be, and balance-sheet; and
 - (iii) in the case of—
 - (A) a proprietary business or profession, copy of the personal account of the proprietor;
 - (B) a firm or association of persons or body of individuals, copies of the personal accounts of the partners or members thereof, as the case may be; and
 - (C) a partner of a firm or a member of an association of persons or body of individuals, copies of the personal account of such partner or member in the firm or association of persons or body of individuals, as the case may be;
- (b) the terms of settlement sought for by the applicant.

(2) The statement of facts, the annexures thereto and the terms of settlement shall each be signed separately by the applicant and the statement of facts shall be verified in the following manner, namely:—

"I,, son/daughter/wife of solemnly
(Name in full and in Block letters)
declare that to the best of my knowledge and belief, the information given in this statement of facts and the annexures accompanying it is correct and complete and other particulars shown therein are truly stated. I further declare that I am making this statement in my capacity as.....and that I am competent to make this
(Designation)

statement of facts and to verify it.

Place.....

Date.....

.....
Signature".

(3) Where a fact which cannot be borne out by, or is contrary to, the record relating to the case is alleged in the statement of facts furnished under sub-rule (1), it shall be stated clearly and concisely and supported by a duly sworn affidavit.

(4) On receipt of the statement of facts and the terms of settlement under sub-rule (1), the Commission shall forward a copy thereof to the Commissioner calling for his further report.

Page 4167: section 245H:

At the beginning of the page, *add*,—

“1987-amendments.—The Finance Act, 1987 (11 of 1987), has—

—inserted a proviso at the end of section 245H(1);

—inserted a new sub-section (1A) after sub-section (1) of section 245H; and

—amended sub-section (2) of section 245H by omitting certain words therefrom,

with effect from 1st June, 1987.

For the scope and effect of all these amendments to section 245H, reference may be made to paragraphs 41.1 to 41.7 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6627 to 6628, *ante*.”.

Page 4167: section 245H:

Before line 6 from bottom, *add*,—

“No stay of criminal prosecution until immunity is granted.—The prosecution is not required to be stayed merely because an application praying for immunity from prosecution is pending before Settlement Commission. Till such an application is granted, there is no immunity and merely because an application in that regard is made about the merits of which there is nothing before the criminal court and regarding the merits of which such court has no jurisdiction, the prosecution cannot be stayed [*Ashvin Kumar Vadilal Patel v S. Rajguru*, (1987) 165 ITR 583 (Guj)]. Also see, *Harbans Singh v Union of India*, (1987) 34 Taxman 495 (Punj).”.

Page 4168: new section 245HA:

After line 17 from top, *add*,—

“New section 245HA.—Section 245HA, relating to power of Settlement Commission to send a case back to the Income-tax Officer if the assessee does not co-operate, has been newly inserted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.

For the scope and effect of the newly-inserted section 245HA, reference may be made to paragraphs 41.1 to 41.7 of the departmental circular No. 495, dated 22nd September, 1987, which have been reproduced at pages 6627 to 6628, *ante*.”.

Page 4170: section 245K:

At the end of the paragraph titled “*Subsequent application for settlement, when barred?*”, *add*,—

“As a result of the amendment of section 245K by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987, a person is also not entitled to apply for settlement under section 245C in relation to any other matter, if and where—

—the case of such person is sent back to the Income-tax Officer by the Settlement Commission under section 245HA.”.

Page 4171: section 245M:

After the text of section 245M, *add*,—

“Omission of section 245M.—Section 245M has been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.”.

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Page 4192: section 246:

Before the Central heading “*Right of appeal*”, *add*,—

“IX. The Finance Act, 1987.—By section 74(c)(vii) of the Finance Act, 1987 (11 of 1987), the words and figures ‘or an order under section 104, made against the assessee, being a company’ have been omitted from section 246(2)(a), with effect from 1st April, 1988. In fact, the omission ought to have been made of the words and figures ‘or an order under section 104’ only. The omission is consequential to the omission, by that Act, of section 104, with effect from 1st April, 1988.”.

Page 4193: section 246:

On the subject “*No inherent right—appeal is a creation of statute*”, reference may also be made to *Deen Dayal Goyal v ITAT*, (1986) 158 ITR 391, 398 (Del).

Page 4194: section 246:

At the end of the paragraphs titled “*Right of appeal is a substantive right*”, *add*,—

“At the same time, the right of appeal is a valuable right and unless expressly taken away or abandoned, it could not be held that the assessee had abandoned or lost such right by implication [*Indian Aluminium Co. Ltd. v CIT*, (1986) 162 ITR 788, 792 (Cal)].”.

Pages 4199-4200: section 246:

On the subject “*Right of appeal to be liberally construed*”, reference may also be made to *Patel & Co. v CIT*, (1986) 161 ITR 568 (Guj).

Page 4203: section 246:

At the end of the paragraph titled “*Remedy of rectification cannot debar the remedy of appeal*”, *add*,—

“However, the above view has been dissented from by the Bombay High Court in *Rameshchandra & Co. v CIT* [(1987) 168 ITR 375, 380 (Bom)], holding that where an assessee has made a statement of facts, he can have no grievance if the taxing authority taxes him in accordance with that statement. If he can have no grievance, he can file no appeal. Therefore, it is imperative, if the assessee’s case is that his statement has been wrongly recorded or that he made it under a mistaken belief of fact or law, that he should make an application for rectification to the authority which passed

the order based upon the statement. Until rectification is made an appeal is not competent.

No appeal for earlier or subsequent year—effect of.—Assessment for every assessment year is a separate and distinct proceeding and its validity or invalidity does not depend on the validity or the invalidity of the proceedings for previous year or subsequent year. Thus, where an assessee has not challenged a particular point in an earlier year or subsequent year, that will not affect the challenge made by the assessee for the year in dispute [*Karnataka Forest Plantations Corporation Ltd. v CIT*, (1986) 156 ITR 275, 277 (Karn)].”.

page 4210: section 246:

At the end of the paragraphs titled “*Appeal against section 104 order*”, add,—

“As a result of the amendment of section 246(2)(a) by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, there will be no provision for an appeal against an order under section 104.”.

Pages 4211-4212: section 246:

On the subject “*Order charging interest—whether appealable?*”, reference may also be made to—

(1) *Central Provinces Manganese Ore Co. Ltd. v CIT*, (1986) 160 ITR 961 (SC) [holding that an appeal lies against an order imposing interest, if the appellant limits himself to the ground that he is not liable to the levy at all].

(2) *CIT v T. Gopal Bhandary*, (1986) 159 ITR 828 (Karn); *CIT v P. V. S. Beedies (P.) Ltd.*, (1987) 163 ITR 846 (Karn) [holding that an appeal lies even against an order charging interest].

(3) *Omprakash Premchand & Co. v CIT*, (1986) 161 ITR 127 (MP); *Barmer Disposal Auto-Parts v CIT*, (1987) 163 ITR 690 (Raj); *CIT v Bengal Jute Mills Co. Ltd.*, (1987) 165 ITR 631 (Cal); *Vittal Reddy v CIT*, (1987) 165 ITR 673 (AP); *Ramesh Chandra v CIT*, (1987) 166 ITR 8 (Raj); *CIT v United Provinces Electric Supply Co. Ltd.*, (1987) 166 ITR 565 (Cal); *CIT v Tamil Murasu Publishers (P.) Ltd.*, (1986) 55 CTR (Mad) 447 [holding that when an appeal is filed against the regular assessment, it would be open to the assessee to agitate, along with other grounds, the charging of interest].

(4) *Central Provinces Manganese Ore Co. Ltd. v CIT*, (1986) 160 ITR 961 (SC); *CIT v State Bank of India*, (1987) 32 Taxman 619, 631 (Bom) [holding that no appeal lies in regard to the improper exercise of discretion to waive or reduce interest].

(5) *CIT v Bharat Motor Services*, (1987) 163 ITR 843 (Karn) [holding that an appeal lies against the refusal of the Income-tax Officer to grant interest under section 214].

Also see, *Lehnu Mal Ram Krishan v ITO*, (1986) 161 ITR 649, 650 (HP).

Page 4213: section 246:

At the end of the paragraph titled "*Assessee's grievances in an appeal against section 143(3) assessment*", add,—

"Where the Income-tax Officer gives a specific finding that the properties in dispute do not belong to the assessee, the assessee is entitled to object to the assessment on the ground that he was not assessable in respect of income from such properties [*Champa Properties (P.) Ltd. v CIT*, (1987) 166 ITR 367, 375 (Cal)].".

Page 4214: section 246:

After line 13 from top, add,—

"In *Rameshchandra & Co. v CIT* [(1987) 168 ITR 375 (Bom)], it has been held that an appeal does not, ordinarily, lie against an assessment made on the basis of admission made by the assessee."

Page 4215: section 246:

After line 8 from top, add,—

"*Appeal against assessment on the basis of section 144B directions.*—An appeal lies against an assessment made on the basis of the directions issued by the Inspecting Assistant Commissioner under section 144B, even though the assessee had not filed any objection to the draft assessment order under section 144B(2) [*Indian Aluminium Co. Ltd. v CIT*, (1986) 162 ITR 788 (Cal)].".

Page 4216: section 246:

Before line 8 from bottom, add,—

"In *H. S. Imam v CIT* [(1987) 34 Taxman 425, 430 (AP)], it has been held that in an appeal against an *ex parte* best judgment assessment under section 144, it is not open to an assessee to raise grounds concerning the validity of the making of an assessment *ex parte* under section 144."

Page 4217: section 246:

At the end of the paragraph titled "*Appeal against a fresh assessment*", add,—

"But, in an appeal against a fresh assessment order, it is not permissible for the assessee to take a fresh point which goes beyond the scope of the remand order of the appellate authority [*S. P. Gramophone Co. v ITAT*, (1986) 160 ITR 417 (Punj)].".

Page 4217: section 246:

In line 6 of the paragraph titled "*Appeal against an order passed giving effect to an appellate order*", after "117 ITR 15 (AP)", add,—"followed in *CIT v Warner Hindustan Ltd.*, (1987) 165 ITR 403 (AP)".

Page 4221: section 246:

Before line 9 from bottom, *add*,—

“Following the decision in *CIT v Manuram Babulal* [(1986) 158 ITR 5 (Pat)], it has been held, in *CIT v Gyanchand Bedi* [(1987) 163 ITR 693 (Pat)], that an appeal lies against an order refusing continuation of registration. Also see, *CIT v Jugsalai Electric Supply Co.*, (1987) 165 ITR 740 (Pat); *CIT v M. N. Ghosh & Sons*, (1987) 167 ITR 125 (Pat); *CIT v Associated Engineering Co.*, (1987) 63 CTR (Pat) 222; *CIT v J. B. Coal Traders*, (1987) 63 CTR (Pat) 363.

Where a composite order has been passed refusing to allow registration and assessing the firm as an unregistered one, an appeal is competent against such an order under the provisions of section 246(1)(c) [*Bishambar Dayal Srinivas v CIT*, (1986) 162 ITR 5 (Raj)].”.

Page 4224: section 246:

Before line 10 from bottom, *add*,—

“It is pertinent to note that in an appeal against a rectification order, the assessee is not entitled to challenge the validity of the order rectified [see, *Ramanand Singh & Co. v CIT*, (1987) 164 ITR 78 (Pat); *CIT v Dalip Kumar Worah*, (1987) 167 ITR 811 (Pat—FB)].”.

Pages 4224-4225: section 246:

Last three lines of page 4224 and first twelve lines of page 4225: The decision in *Imperial Chemical Industries Ltd. CIT* [(1979) 116 ITR 516 (Cal)] has been followed in *CIT v Shell Petroleum Co. Ltd* [(1987) 164 ITR 346 (Cal)].

Page 4225: section 246:

In line 19 from top, after “158 ITR 278, 304 (Pat)”, *add*,—“; *Ram Chandra Prasad Bhadani v CIT*, (1987) 167 ITR 313 (Pat)” [holding that under the 1922 Act provisions, no appeal laid against a rectification order].

Page 4225: section 246:

After line 29 from top, *add*,—

“However, the Bombay decision in *S. C. Shah's* case [(1982) 137 ITR 287 (Bom)] has been **dissented from** by the Karnataka High Court in *CIT v H. V. Mirchandani* [(1986) 161 ITR 800 (Karn)]. In the Karnataka case, refund resulted for the first time from a rectification order. The assessee claimed interest under section 244(1A) on such refund. The claim was rejected by the Income-tax Officer. It was held that no appeal lies against such rejection because it cannot be regarded as an order of rectification having the effect of ‘reducing the refund’. The expression ‘reducing the refund’ in section 246(1)(f) presupposes that there should have been already an assessment order in which refund has been ordered and that refund on rectification under section 154 must have been reduced.”.

Pages 4228-4229: section 246:

On the subject "*One single appeal against separate orders of assessment and refusal of registration possible*", reference may also be made to *Ansari Jewellers v CIT*, (1987) 167 ITR 380 (Raj).

Page 4229: section 246:

After line 18 from top, *add*,—

"*Appeal against order refusing continuation of registration.*—In the facts of the following cases, it has been held that an appeal lies against an order refusing continuation of registration under section 184(7):—

- (1) *Beharilal Ishwardass v CIT*, (1987) 164 ITR 274 (Raj).
- (2) *CIT v Narayandas Satyaranjan*, (1987) 167 ITR 280 (Ori).
- (3) *Gudmal Mutoliram v CIT*, (1987) 31 Taxman 406 (Raj)."

Page 4233: section 246:

After line 23 from top, *add*,—

"Section 246(1)(o) provides, *inter alia*, for an appeal against an order imposing penalty under section 271(1)(c). It, however, does not provide for any appeal against the action of the Income-tax Officer in raising a demand under section 156 in pursuance of the penalty order. Accordingly, any question regarding the validity of the notice of demand issued in pursuance of such penalty order cannot fall within the purview of the appeal filed by the assessee against the penalty order [*Durga Dass Aggarwal & Co. v CIT*, (1987) 34 Taxman 460 (Punj)].

The validity of a penalty order cannot be challenged in an appeal against a rectification order which rectified such penalty order [*Ramanand Singh & Co. v CIT*, (1987) 164 ITR 78 (Pat); *CWT v Dalip Kumar Worah*, (1987) 167 ITR 811 (Pat—FB)]."

Page 4236: section 246:

Before line 6 from bottom, *add*,—

"In the facts of the following cases, a writ was held maintainable:—

- (1) *Sharbati Devi Jhalani v CWT*, (1986) 159 ITR 549 (Del) [challenging validity of a rule].
- (2) *Gaurhari Singhania v WTO*, (1986) 159 ITR 785 (All) [where the assessee made a *prima facie* case for issuing a direction].

On the other hand, in the facts of the following cases, a writ was held not maintainable:—

- (1) *Rishi Roop Chemical Co. (Pr.) Ltd. v STO*, (1987) Tax LR 2076 (All) [where the impugned order was challenged on the ground that certain exemption was not granted by taking a wrong view of the law].

Proper High Court.—In order to obtain a relief by filing a writ petition, the same must be filed in a High Court having jurisdiction over the matter. In *Geep Industrial Syndicate Ltd. v CBDT* [(1987) 166 ITR 88 (Del)], it has been held that a circular issued by a particular authority cannot

constitute a ground for the Delhi High Court to assume jurisdiction in respect of a matter which clearly fell within the territorial jurisdiction of the Allahabad High Court.”.

Page 4237: section 246:

At the end of the paragraph titled “*A single writ petition in respect of several assessment years—whether possible?*”, add,—

“In the facts of *Sellakumar Talkies v Board of Revenue* [(1986) Tax LR 1972 (Mad)], a single writ petition was held maintainable against a common order passed in several revision petitions filed.”.

Page 4237: section 246:

On the subject “*Delay, when fatal*”, reference may also be made to—

(1) *Coca-Cola Export Corporation v ITO*, (1986) 158 ITR 439 (Del), special leave petition granted by the Supreme Court: (1984) 152 ITR (St.) 226 (SC) [delay of five years was held fatal].

(2) *Plycast (Delhi) P. Ltd. v ITO*, (1986) 159 ITR 750 (Del) [delay of three years was held not fatal but costs were not awarded].

(3) *Ram Mohan Rastogi v Union of India*, (1987) 163 ITR 17 (All) [writ dismissed for delay as there was no adequate explanation for the delay].

Pages 4237-4239: section 246:

On the subject “*Existence of an adequate alternative remedy, whether a bar to writ petition?*”, reference may also be made to—

(1) *Coca-Cola Export Corporation v ITO*, (1986) 158 ITR 439 (Del), special leave petition granted by the Supreme Court: (1984) 152 ITR (St.) 226 (SC) [alternative remedy, held a bar]. Also see, *Vinod Kumar Didwania v ITO*, (1986) 159 ITR 91 (Mad); *Okayti Tea Co. Ltd. v ITO*, (1986) 160 ITR 487 (Cal); *Ram Mohan Rastogi v Union of India*, (1987) 163 ITR 17 (All); *Kripal Singh v CIT*, (1987) 164 ITR 144 (All); *P. V. Thyagaraj v TRO*, (1987) 165 ITR 412 (Mad); *Sawar Mal Choudhary v State Bank of India*, (1987) 165 ITR 467 (Pat); *Chhatar Extractions Pr. Ltd. v Excise & Taxation Commissioner*, (1986) Tax LR 2315 (Punj); *Raza Textiles Ltd. v CIT*, (1987) 34 Taxman 130 (All); *Karnataka Industrial Areas Development Board v CIT*, (1987) 168 ITR 96 (Karn).

(2) *Krishi Utpanna Bazar Samiti v ITO*, (1986) 158 ITR 742 (Bom) [alternative remedy, held not a bar]. Also see, *Himangshu Sekhar Chakravorty v TRC*, (1987) 164 ITR 540 (Gauh); *Remex Constructions/Remex Electricals v ITO*, (1987) 166 ITR 18 (Bom); *Dharmatma Saran Kothiwal v ACED*, (1987) Tax LR 148 (All).

Page 4239: section 246:

After line 5 from top, add,—

“**High Court, in disposing a writ petition, must pass a speaking order.—** It is a cardinal principle of rule of law which governs our policy that the

Court including Writ Court is required to record reasons while disposing of a writ petition in order to enable the litigants, more particularly the aggrieved party, to know the reasons which weighed with the mind of the Court in determining the questions of facts and law raised in the writ petition or in the action brought. This is imperative for the fair and equitable administration of justice. More so when there is a statutory provision for appeal to the higher court in the hierarchy of courts in order to enable the superior court or the appellate court to know or to be apprised of the reasons which impelled the court to pass the order in question. This recording of reasons in deciding cases or applications affecting rights of parties is also a mandatory requirement to be fulfilled in consonance with the principles of natural justice. It is no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order like 'dismissed' or 'rejected' will be made without passing a reasoned order or a speaking order. It is not, however, necessary that the order disposing of a writ petition or of a cause must be a lengthy one recording in detail all the reasons that played in the mind of the court in coming to the decision. What is imperative is that the order must in a nutshell record the relevant reasons which were taken into consideration by the Court in coming to its final conclusions and in disposing of the petition or the cause, by making the order, thereby enabling both the parties seeking justice as well as the superior court, where an appeal lies, to know the mind of the court as well as the reasons for its finding on questions of law and facts in deciding the said petition or cause. In other words, fairplay and justice demand that justice must not only be done but must seem to have been done [*Vasudeo Vishwanath Saraf v New Education Institute*, (1986) 161 ITR 835, 840-841 (SC)].”.

Page 4239: section 246:

On the subject “*Writ petition challenging the validity of a levy—grant of stay of recovery*”, reference may also be made to *Empire Industries Ltd. v Union of India: Union of India v Rcal Honest Textiles*, (1986) 162 ITR 846, 875-76 (SC); *CTO v Gourangalal Chatterjee*, (1987) 66 STC 394 (Cal).

Page 4242: section 247:

On the subject “*Appeal under section 247*”, reference may also be made to *Gopikishan and Ramkishan v CIT*, (1987) 61 CTR (Mad) 232.

Page 4255: section 249:

In line 3 from top, after “101 ITR 46, 52 (Guj)”, add,—“; *State of AP v Venkataramana Chuduva & Muramura Merchant*, (1986) 159 ITR 59 (AP)” [holding that a subsequent decision of the High Court or the Supreme Court, which changed the position, the interpretation or the understanding of law, constituted sufficient cause for condoning the delay].

Page 4255: section 249:

After line 12 from top, *add*,—

“In the facts of *CIT v K. S. P. Shanmugavel Nadar* [(1987) 30 Taxman 133, 138 (Mad)], the time taken in prosecuting other remedies was held to be taken into consideration while determining the question whether the assessee had sufficient cause for not presenting the appeal in time.

In *Nebha & Co. v State of Gujarat* [AIR 1986 SC 987], it has been held that the pendency of writ petitions in the Supreme Court may be considered as sufficient ground for condoning delay in availing of statutory remedies.”.

Page 4255: section 249:

At the end of the page, *add*,—

“**Condonation of delay—liberal approach needed.**—Dealing with the condonation of delay under section 5 of the Limitation Act, 1963, the Supreme Court, in *Collector, Land Acquisition v Mst. Katiji* [(1987) 167 ITR 471, 472-73 (SC)], has laid down as under:—

‘The Legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational, common sense and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the

“Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”.

other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay.' Also see, *Union of India v Suresh N. Shetty*, (1986) 26 Taxman 398 (Karn).".

Page 4261: section 250:

After line 8 from top, *add*,—

"Hearing on an early date.—Normally, the appeal must be heard on the date fixed for hearing. Where a prayer is made for early hearing of the appeal by the counsel of the appellant, the appellate authority must be fully satisfied that the date of hearing is being pulled back with the instructions of the appellant and only then the hearing should be done on the advanced date [see, *CIT v Jyoti Tube-well Co.*, (1987) 164 ITR 301, 305 (Pat)].".

Page 4261: section 250:

At the end of the last line of the paragraphs titled "*Right to be heard*", *add*,—"The Gujarat decision in *Shrenik Kasturbhai v CWT* [(1974) 95 ITR 326 (Guj)] has been affirmed in *CWT v Shrenik Kasturbhai (HUF)* [(1987) 165 ITR 661 (SC)].".

Page 4267: section 250:

On the subject "*Permitting new grounds to be taken*", reference may also be made to—

(1) *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 484 (Punj) [The AAC has power to admit an additional ground to give relief to the assessee when it is admissible to him on the material already available on the record].

(2) *Champa Properties Pr. Ltd. v CIT*, (1987) 166 ITR 367, 376 (Cal) [It is open to the assessee to raise an additional ground of appeal in respect of a matter which has an impact on the income to be assessed or the amount of tax determined].

Pages 4268-4269: section 250:

On the subject "*Making a new claim for the first time in an appeal before the first appellate authority*", reference may also be made to *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 484 (Punj).

Pages 4271-4272: section 250:

On the subject "*Merger of the appealed order into the appellate order*", reference may also be made to—

(1) *State of Tamil Nadu v P. Ganesa Udayar*, (1987) 63 CTR (Mad) 217 [holding that theory of merger cannot have application where the order of the superior authority is alleged to be merged with the order of a lower authority].

Page 4276: section 251:

On the subject "*Non-exercise of a power by the ITO may be corrected by the AAC/CIT(A)*", reference may also be made to *Indermal Natwarlal v CIT*, (1987) 166 ITR 494 (MP).

Page 4285: section 251:

At the end of line 17 of the paragraphs titled "*Assessment when to be annulled?*", add,—"*But, in CIT v Gyan Prakash Gupta [(1987) 165 ITR 501 (Raj)], it has been held that where an assessment is made on the strength of a return of income filed by the deceased during his life-time without issuing notices under section 143(2) to legal representatives of the deceased, such assessment is liable to be set aside and not to be annulled.*

Similarly, an assessment completed on the basis of the original return ignoring the revised return is not a nullity and such an assessment is liable to be set aside and not to be cancelled [*CIT v Chitranjali*, (1986) 159 ITR 801 (Cal)].

Also, in *H. S. Imam v CIT* [(1987) 34 Taxman 425 (AP)], it has been held that an assessment made under section 144 should not, ordinarily, be annulled but only be set aside even where the appellate authority is of the view that the *ex parte* assessment under section 144 was not warranted in the facts of the case."

Page 4287: section 251:

On the subject "*Orders of remand held proper*", reference may also be made to *Raza Textiles Ltd. v CIT*, (1987) 34 Taxman 130 (All).

Pages 4287-4288: section 251:

At the end of the paragraph titled "*Remand order in an appeal against an ex parte assessment—direction to look into books of account*", add,—

"In such a case, it would not be proper for the appellate authority to remand the case with a direction to the assessing authority to modify the assessment after accepting the books of account. The hands of the assessing authority should not be tied. The remand should be with a freedom for the assessing authority to accept or reject the books of account and to arrive at an assessment independently [*Dy. Commissioner v P. M. George*, (1987) 163 ITR 345 (Ker)]."

Page 4291: section 251:

Before line 12 from bottom, add,—

"In *Dr. (Mrs.) Bimla Gulati v AAC* [(1987) 165 ITR 296 (MP)], the

Income-tax Officer appended to the assessment order a note to the effect that it was difficult to hold that the income from the nursing home belonged to the assessee. In appeal, the Appellate Assistant Commissioner issued to the assessee a show-cause notice asking her why income from the nursing home should not be included in her income. It was held that the AAC had jurisdiction to issue a show-cause notice for enhancement. It could not be said that the AAC travelled outside the record with a view to find new source of income as the note formed part of the assessment order itself.

Where the first appellate authority reconsiders the same material which was considered by the Income-tax Officer and reaches a different conclusion, it cannot be contended that the appellate authority has created a new source [*Bishamber Nath Ram Sarup v CIT*, (1987) 163 ITR 87 (Del)].

Similarly, where a matter, which directly arose in the course of the assessment, was not examined by the Income-tax Officer in its proper perspective and the first appellate authority remands the case for examining the assessment in that aspect of the matter, it cannot be said that the appellate authority has, by his order of remand, introduced any new source of income not processed by the Income-tax Officer. This is so because the appellate authority has power to examine all matters covered by the assessment order and even to correct the assessment in respect of all such matters to the prejudice of the assessee [*Indermal Natwarlal v CIT*, (1987) 166 ITR 494 (MP)].”.

Page 4292: section 251:

After line 26 from top, *add*,—

“Power to decide question of title.—The Income-tax Officer has plenary power to decide the title to any property for the purpose of assessment in accordance with law. The first appellate authority has also power to decide the question of title [*Champa Properties Pr. Ltd. v CIT*, (1987) 166 ITR 367, 376 (Cal)].”.

Pages 4294-4295: section 251:

At the end of the paragraphs titled “*Appeal against refusal to grant registration to a firm*”, *add*,—

“Where the application for registration in Form No. 11 was found to be defective, the Appellate Assistant Commissioner was held justified in directing the Income-tax Officer to remove that defect by accepting an application for registration in Form No. 11A [*Addl. CIT v Punjab Sweet House*, (1986) 161 ITR 600 (Pat)].”.

Page 4296: section 251:

After line 13 of the paragraphs titled “*Appeal against an order of penalty*”, *add*,—

“In *Bhoomareddy Bros. v CIT* [(1987) 163 ITR 854 (Karn)], the power of the Appellate Assistant Commissioner to enhance the penalty levied has been upheld.”.

Page 4308: section 252:

Before the text of section 253, *add*,—

“Standing Order No. 1 of 1980, dated 29th February, 1980, has further been modified by Order of the Income-tax Appellate Tribunal, dated 19th June, 1986 [(1986) 160 ITR (St.) 65], which reads as under:—

‘The appeals under section 269G of the Income-tax Act, 1961, from the orders of the Competent Authority, Lucknow, in Uttar Pradesh are filed before the Income-tax Appellate Tribunal, Allahabad Benches, Allahabad, even in cases where the assessee is a resident of the district of Budaun in Uttar Pradesh which otherwise fall within the jurisdiction of the Delhi Benches. This is causing difficulties to the assessee over there.

It is hereby ordered that where orders are passed by the aforesaid Competent Authority in cases of assessee who are assessed or assessable to income-tax in areas in the District of Budaun in Uttar Pradesh, the appeals shall lie to the Delhi Bench.

My Standing Order No. 1 of 1980 dated 28th (29th?) February, 1980, read with corrigenda dated 13th March, 1980, and 25th August, 1982, and partially modified by my Amendment Order No. 1 of 1984 dated 4th January, 1984, is modified to this extent.’

Page 4313: section 253:

After line 3 from top, *add*,—

“A second appeal is not maintainable against an order of the first appellate authority whereby the assessee’s appeal was allowed in its entirety, because, in such a case, the assessee cannot be said to be ‘aggrieved’ by the appellate order of the first appellate authority within the meaning of section 253 [*CIT v Princess Sarla Kumari*, (1987) Taxation 87(3)-59, 62 (MP)].”

Page 4316: section 253:

After line 20 of the paragraph titled “*Appeal to the Appellate Tribunal competent against AAC’s/CIT(A)’s order rejecting an appeal on preliminary ground*”, *add*,—

“In *CIT v Kalipada Ghose* [(1987) 167 ITR 173 (Ori)], it has been held that an order of the Appellate Assistant Commissioner dismissing an appeal for non-compliance with the provisions of section 249(4) about payment of admitted tax comes within the ambit of section 250 and is appealable before the Appellate Tribunal under section 253.”

Page 4316: section 253:

In line 10 from bottom, after “117 ITR 930, 937-8 (Mad)”, *add*, “*Guru Prasad v CIT: Chhattu Ram v CIT: Chhattu Ram Horil Ram (P.) Ltd. v CIT*, (1986) 158 ITR 278, 304 (Pat); *Ram Chandra Prasad Bhadani v CIT*, (1987) 167 ITR 313, 318 (Pat)” [holding that if the first appellate authority purported to deal with a matter in appeal as if that appellate authority had jurisdiction to deal with that appeal though in fact that autho-

rity had no jurisdiction to deal with the appeal, the order of that appellate authority would become appealable to the Appellate Tribunal].

Pages 4325-4326: section 253:

At the end of the paragraphs titled "*Condonation of delay*", add,—

"Where in passing an order appealed against the authority had acted without jurisdiction, that fact is enough for the Tribunal to condone the delay and entertain the appeal. This is so because the Tribunal should not defeat the ends of justice merely because the party failed to resort to the proper procedure in filing the appeal [*Remex Constructions/Remex Electricals v ITO*, (1987) 166 ITR 18, 23 (Bom)].".

Page 4326: section 253:

At the end of line 6 of the paragraph titled "*Sufficient cause for condonation of delay*", add,— "This Supreme Court decision [AIR 1954 SC 411] has been applied in *Mohanlal Chedilal v CST* [(1986) 62 STC 264 (All)].

The question whether there exists a sufficient case for condoning the delay or not is, ordinarily, a question of fact [*CIT v Shri Jagdish Chand*, (1987) Taxation 86(3)-15 (Punj)].".

Pages 4345-4347: section 254:

On the subject "*Subject-matter of a Tribunal appeal*", reference may also be made to—

(1) *Popular Kuries Ltd. v CIT*, (1986) 159 ITR 519 (Karn) [Tribunal was held justified in allowing the appeal on a point not set forth in the memorandum of appeal].

(2) *CIT v Princess Sarla Kumari*, (1987) Taxation 87(3)-59 (MP) [Tribunal was held not justified in freshly enquiring a matter which did not arise out of the order of the first appellate authority].

Pages 4347-4348: section 254:

At the end of the paragraph titled "*Tribunal cannot give more relief than that asked for by the appellant*", add,—

"In *CIT v Princess Sarla Kumari* [(1987) Taxation 87(3)-59 (MP)], the Tribunal was held not correct in law in directing that the taxes already paid should be refunded to the assessee in the absence of any claim by the assessee or order on the point by the lower authorities.".

Pages 4353-4356: section 254:

On the subject "*Power to allow the appellant to take a new ground*", reference may also be made to—

(1) *B. M. Marappa v IAC*, (1986) 160 ITR 642 (Karn) [An additional ground relating to procedural matters cannot be raised for the first time before the Tribunal].

(2) *Okayati Tea Co. Ltd. v ITO*, (1986) 160 ITR 487 (Cal) [Tribunal was held within its jurisdiction in not entertaining certain contentions which were not mooted earlier].

(3) *CIT v Pratapsingh*, (1987) 164 ITR 431 (Raj) [Tribunal was held not justified in refusing to entertain the plea of the department that the income from the lease rent of the cinema building was assessable under the head 'Income from other sources' instead under the head 'Income from house property'].

(4) *CIT v Maryam Mirza*, (1987) 165 ITR 339 (Karn) [Tribunal was held justified in refusing to entertain alternative ground that the amount in question should be held assessable to tax as capital gains on transfer of leasehold rights]. Also see, *CIT v Vardhini & Co.*, (1987) 165 ITR 342 (Karn).

(5) *CIT v Bengal Jute Mills Co. Ltd.*, (1987) 165 ITR 631 (Cal) [Tribunal was held competent to consider a question regarding accrual of interest raised for the first time before it as the facts regarding interest were recorded in the balance sheet which formed part of the record of the case].

(6) *CIT v Bengal Jute Mill Co. Ltd.*, (1987) 165 ITR 646 (Cal) [Tribunal was held justified in entertaining a ground which was not urged before the Income-tax Officer and the Appellate Assistant Commissioner as the evidence and material to such ground were already on record]. Also see, *CED v R. Brahadeeswaran*, (1987) 163 ITR 680 (Mad).

(7) *CIT v Srimal Rikabchand & Co.*, (1987) 166 ITR 193 (Karn) [The exercise of discretion by the Tribunal under rule 11 of the Tribunal Rules, 1963, to allow or not to allow a ground not set forth in the memorandum of appeal to be raised would not, generally, be a question of law]. But in *Lal Chand Des Raj Singh Hukan Chand v CIT* [(1987) 163 ITR 360 (Punj)], the question whether the Tribunal while deciding an appeal under section 254(1) had jurisdiction to permit the revenue to make out a new case to the effect that D was not a genuine partner, has been held to be a question of law. Also see, *CIT v Mohan Meakin Breweries Ltd.*, (1987) 63 CTR (Del) 380.

(8) *CIT v Balchand Malviya*, (1987) 59 CTR (MP) 147 [Additional ground was held not to be entertained as the point in that regard was covered by a decision of the High Court].

(9) *Deep Chand Kothari v CIT*, (1987) Taxation 87(3)-123 (Raj) [Tribunal was held legally not right in not allowing the objections as to the jurisdiction of the Income-tax Officer to initiate reassessment proceedings under section 147].

Pages 4357-4358: section 254:

On the subject "*Whether a new claim can be raised before the Tribunal?*", reference may also be made to *CIT v Ganga Engineering Works*, (1987) 165 ITR 795 (MP) [holding that a new claim can be raised before, and allowed by, the Tribunal if there were materials on record to justify such claim].

Pages 4364-4365: section 154:

At the end of the paragraphs titled "*Production of evidence before the Tribunal—rule 29*", add,—

"In *Dy. CST v M. P. Chellappan* [(1987) Tax LR 2188 (Ker)], the Tribunal passed an order after accepting a fresh evidence without giving opportunity to the other party and without recording reasons for admitting the fresh evidence. It was held that the Tribunal acted illegally and without jurisdiction in accepting the fresh evidence and, therefore, the Tribunal's order was set aside and the matter was remitted to it for *de novo* consideration.

The question whether the Tribunal acted in proper exercise of its jurisdiction under rule 29 in permitting the revenue to tender fresh evidence and allowing it to raise a new plea has been held to be a question of law [*Lal Chand Des Raj Singh Hukam Chand v CIT*, (1987) 163 ITR 360 (Punj)].".

Page 4373: section 254:

Before line 3 from bottom, *add*,—

"Where remand involves investigation into new aspects or other sources of allowance, remand should not be resorted to. But where new sources do not fall for consideration, the Tribunal must be held to be fully empowered either to remand it or to go into the question itself [*CIT v Seraikella Glass Works (P.) Ltd.*, (1986) 159 ITR 677, 680 (Pat)].

A remand cannot be prayed for in the hope of digging out material which would throw doubt on the genuineness of the transaction [*CIT v Harikishan Jethalal Patel*, (1987) 168 ITR 472, 480 (Guj)].".

Pages 4373-4374: section 254:

At the end of the paragraphs titled "*Remand held not proper*", after serial No. 6, *add*,—

"7. *Chummilal Surajmal v CIT*, (1986) 160 ITR 141 (Pat).

8. *Raja Vikramaditya Singh v CIT*, (1987) Tax LR 888 (MP).".

Page 4374: section 254:

At the end of the paragraphs titled "*Remand held proper*", after serial No. 9, *add*,—

"10. *CIT v Dalmia Dairy Industries Ltd.*, (1986) 159 ITR 33 (Del).

11. *CIT v Jyoti Tube-well Co.*, (1987) 164 ITR 301 (Pat).".

Page 4375: section 254:

On the subject "*Earlier decision does not operate as res judicata*", reference may also be made to *Ambika Prasad Sonar v CIT*, (1987) 168 ITR 444 (All).

Pages 4375-4376: section 254:

On the subject "*Calling for a report from the lower authorities*", reference may also be made to *Thakur V. Hari Prasad v CIT*, (1987) 167 ITR 603 (AP).

Page 4377: section 254:

After line 22 from top, *add*,—

“Power of the Tribunal in appeal against a fresh assessment on remand.—

Where the matter is taken in appeal before the Tribunal against a fresh assessment order made in pursuance of a remand by the appellate authority, the Tribunal has no jurisdiction to consider and decide a particular point which has already been decided by such appellate authority in an appeal against the original assessment order and has become final as no further proceedings were taken against such remand order. This is so because otherwise the procedure would offend against the rule of finality of judicial proceedings [*R. K. Sawhney, Executor of the Estate of Late R. B. Nathu Ram v CIT*, (1987) 166 ITR 128 (Del); *CIT v Swaraj Motors (P.) Ltd.*, (1987) 167 ITR 83 (Ker)].

However, where the matter is taken in appeal before the Tribunal against a fresh assessment made in pursuance of a remand by the Commissioner in exercise of his jurisdiction under section 263, the jurisdiction of the Tribunal, in deciding such an appeal, is unfettered and it can give its opinion on all the matters arising in regularly constituted appeal before it, including the matters on which the Commissioner has already expressed an opinion [*State of Tamil Nadu v P. Ganesa Udayar*, (1987) 63 CTR (Mad) 217].”.

Pages 4377-4378: section 254:

At the end of the paragraphs titled “*Tribunal cannot ignore principles of natural justice*”, *add*,—

“In *Kalra Glue Factory v Sales Tax Tribunal* [(1987) 167 ITR 498 (SC)], the order of the Tribunal was set aside because the same contained a finding arrived at relying on a statement which was not tested by cross-examination.

Also see, *Dy. CST v M. P. Chellappan*, (1987) Tax LR 2188, 2190 (Ker).”.

Page 4378: section 254:

After line 4 from top, *add*,—

“Where the Tribunal, in deciding a matter, refers to a relevant decision of the Supreme Court even though such decision was not referred to by either party and decides the matter on that basis, it cannot be held that the Tribunal has passed its order in disregard of the principles of natural justice [*Raja Baldeodas Birla Santati Kosh v CIT*, (1986) 158 ITR 601, 603 (Raj)].”.

Page 4380: section 254:

After line 13 from top, *add*,—

“The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant

law. The Tribunal was undoubtedly competent to disagree with the view of the Appellate Assistant Commissioner; but in proceeding to do so, it had to act judicially, *i.e.*, to consider all the evidences in favour of and against the assessee. An order recorded on a review of only a part of the evidence and ignoring the remaining evidence could not be regarded as conclusively determinative of the question of fact raised before the Tribunal [*Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1987) 168 ITR 705, 713 (SC)].

The Tribunal is under obligation to give its findings so as to clearly indicate precisely the questions for its determination, the evidence for and against in regard to each one of the questions and the findings arrived at [*Tribhovandas Vithaldas v CIT*, (1986) 159 ITR 236, 242 (Guj)].

Appraisal of evidence possible.—When an explanation is offered by the assessee regarding cash credits appearing in his books, if the evidence is shut out and the witnesses produced are not permitted to explain the credit, it will be open to the Tribunal to appraise the evidence as it is and reach its own conclusion which may result in the cash credit being accepted as genuine [*CIT v Ishwar Dass Sharma*, (1986) 158 ITR 168, 169 (Del)].”.

Pages 4380-4381: section 254:

At the end of the paragraphs titled “*Tribunal’s duty to decide all the issues*”, add,—

“Where an appeal is decided by the Tribunal without disposing of certain grounds raised in the memorandum of appeal, the matter is liable to be sent back to the Tribunal with a direction that it will redecide the case after disposing of the non-disposed of grounds [*CST v Vishwa Engineering Co.*, (1986) Tax LR 2314 (All)].

Tribunal bound to dispose the appeal on merits.—Where a competent appeal has been filed in time, the Tribunal is bound to examine it on merits and decide it one way or the other. Even if the Tribunal feels that the appeal should be decided only after the disposal of a reference pending before the High Court, then it should have postponed the hearing of the appeal and taken it up for hearing after a decision is rendered in that reference [*CIT v M. Parthasarathy*, (1987) 163 ITR 655, 657 (Karn)]. In the facts of *CIT v Kalinga Airlines (P.) Ltd.* [(1987) 168 ITR 238 (Ori)], the Tribunal was directed to rehear the second appeal after disposal of reference in an allied case by the High Court. Also see, *CIT v B. P. Mines (P.) Ltd.*, (1987) 168 ITR 246 (Ori).

However, when once the Tribunal has found that the appeal filed before it is incompetent, it should refrain from dealing with the merits of the appeal [*IAC v K. B. Nagarala*, (1986) 162 ITR 170 (Karn)].”.

Pages 4382-4383: section 254:

At the end of the paragraphs titled “*Power to set aside its ex parte order and rehear the appeal*”, add,—

"Rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963, as substituted with effect from 1st August, 1987, gives specific power to the Tribunal to set aside an *ex parte* appellate order passed on non-appearance of the appellant.

But rule 25 of those Rules, as substituted with effect from 1st August, 1987, does not specifically empower the Tribunal to set aside an *ex parte* appellate order passed on non-appearance of the respondent."

Pages 4384-4385: section 254:

On the subject "*Power to rectify its orders*", reference may also be made to—

(1) *CIT v Shakuntala Rajeshwar*, (1986) 160 ITR 840 (Del) [Where the Tribunal's appellate order is founded on a mistaken assumption, the Tribunal is justified in invoking its power under section 254(2) so as to undo such erroneous assumption].

(2) *Bishwanath Prasad & Sons v CIT*, (1987) 163 ITR 715 (All) [Whether the Tribunal was justified in dismissing a rectification application on the ground that virtually it was a review application is a question of law].

(3) *ITO v ITAT*, (1987) 31 Taxman 330 (Raj) [Under the garb of rectification under section 254(2), the Tribunal cannot exercise the power of review and recall the order whole hog]. Also see, *Union of India v ITAT*, (1987) 31 Taxman 385 (Raj).

Pages 4385-4386: section 254:

On the subject "*Tribunal's power to review its own decisions*", reference may also be made to—

(1) *CIT v Dr. (Mrs.) Krishna Rana*, (1987) 167 ITR 652 (Pat); *ITO v ITAT*, (1987) 31 Taxman 330 (Raj); *Union of India v ITAT*, (1987) 31 Taxman 385 (Raj) [As the Tribunal is not a court, it has no power to review its own orders].

Page 4388: section 254:

After line 14 of the paragraphs titled "*Power to invoke and revoke proviso to section 145(1)*", add,—

"In the facts of *Dinanath Dubey v CIT* [(1986) 160 ITR 1 (MP)], the Tribunal was held justified in rejecting the assessee's claim of loss and in applying rates estimated in earlier years.

In the facts of *CIT v Thakumral Bajranglal* [(1987) Taxation 86(3)-285 (Raj)], the Tribunal was held not justified in holding that the proviso to section 145(1) was resorted to in that case and it should have decided the matter on the basis of section 145(2)."

Page 4389: section 254:

After line 21 of the paragraph titled "*No power of enhancement*", add,—

"The view taken by the Rajasthan High Court, in *CIT v Pratapsingh* [(1987) 164 ITR 431, 435 (Raj)], that the Appellate Tribunal can pass

any order which it thinks fit which includes the power of enhancement of tax, it is submitted, requires reconsideration.”.

Pages 4391-4392: section 254:

At the end of the paragraphs titled “*Altering the status*”, *add,—*

“Where a return has been filed in the status of a HUF and the assessment has been made in the status of an individual and the material on record shows that the assessee is a HUF, the Appellate Tribunal has ample power to set aside the assessment as individual and direct assessment in the status of a HUF. In such a case, the Tribunal would not be justified in merely cancelling the assessment as an individual [Cf. *CGT v Maharaja Kumar Kamal Singh*, (1986) 162 ITR 352 (Pat)].”.

Page 4394: section 254:

At the end of the paragraphs titled “*Appeal against section-263-order*”, *add,—*

“Where the Commissioner, in exercise of his revisional powers under section 263, directed the Income-tax Officer not to grant a particular relief, in an appeal against such revisional order, the Tribunal is empowered to modify the revisional order and direct the Income-tax Officer to verify the facts in that regard and finalise the assessment on that basis [*Indian Textiles v CIT*, (1986) 157 ITR 112 (Mad)].

Where the Commissioner’s revisional order is set aside by the Tribunal, the Income-tax Officer is not competent to make a fresh assessment in pursuance to the direction given in the revisional order of the Commissioner, till the Tribunal’s appellate order is set aside [*Govindram Seksaria Charity Trust v ITO*, (1987) 168 ITR 387 (MP)].”.

Pages 4395-4396: section 254:

At the end of the paragraphs titled “*Tribunal’s powers in appeals against imposition of penalty*”, *add,—*

“At the same time, the Tribunal is also empowered to call for a report from the Inspecting Assistant Commissioner after giving an opportunity of being heard to the assessee as well as the revenue to adduce such evidence as it deems necessary and then the Tribunal can decide the matter of penalty [*Thakur V. Hari Prasad v CIT*, (1987) 167 ITR 603 (AP)].”.

Page 4399: section 254:

Before line 3 (excluding the footnote) from bottom, *add,—*

“Rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963, as it stood prior to its substitution with effect from 1st August, 1987, empowered the Tribunal to dismiss an appeal for the appellant’s default and also to restore such an appeal for rehearing on showing sufficient cause in that regard. That rule 24 made no provision for restoration of an appeal dismissed on merits, although on default of the appellant [*CIT v Dr. (Mrs.) Krishna Rana*, (1987) 167 ITR 652, 656 (Pat)]. It may be noted that

rule 24, as substituted with effect from 1st August, 1987, empowers the Tribunal to restore an appeal which has been decided on merits.

It is also noteworthy that under the so-substituted rule 24, there is no provision for dismissal of an appeal for appellant's default. That rule 24, with effect from 1st August, 1987, empowers the Tribunal to dispose of the appeal on merits after hearing the respondent where the appellant does not appear either in person or through an authorised representative.”.

Page 4399: section 254:

At the end of the footnote marked †, *add*,—“Also see, *Asian Paints (India) Ltd. v State of M. P.*, (1986) 62 STC 260 (MP).”.

Pages 4404-4405: section 254:

On the subject “*Question of vires cannot be decided by AAC/CIT(A) or the Tribunal*”, reference may also be made to *Mysore Breweries Ltd. v CIT*, (1987) 166 ITR 723 (Karn).

Pages 4405-4406: section 254:

On the subject “*Finality of Tribunal's orders*”, reference may also be made to *R. K. Sawhney, Executor to the Estate of Late R. B. Nathu Ram v CIT*, (1987) 166 ITR 128, 132 (Del).

Pages 4406-4407: section 254:

On the subject “*Binding nature of orders of Tribunal*”, reference may also be made to *Govindram Seksaria Charity Trust v ITO*, (1987) 168 ITR 387 (MP).

Page 4415: section 256:

At the end of line 4 from top, *add*,— “Also, no reference was held to lie against an order passed by the Tribunal for rehearing of the appeal on a miscellaneous petition because such an order does not come within the periphery of section 254 [*CIT v Dr. (Mrs.) Krishna Rana*, (1987) 167 ITR 652, 657 (Pat)]. Also see, *CWT v Smt. Illa Dalmia*, (1987) 168 ITR 306 (Del).”.

Page 4416: section 256:

After line 19 from top, *add*,—

“References against orders under section 33(4) of the 1922 Act.—The provisions of section 256(1) of the 1961 Act and those of section 66(1) of the 1922 Act are *in pari materia*. An application for reference under section 256(1) of the 1961 Act against an order passed by the Tribunal under section 33(4) of the 1922 Act is to be treated as one filed under the 1922 Act provisions. This is so because the Tribunal does not lose its jurisdiction by wrong quotation of a provision of law [*CIT v ITAT*, (1987) 166 ITR 694 (Punj)].”.

Page 4417: section 256:

After line 5 from top, *add*,—

“A question of fact does not become a question of law only because it is elaborately examined [*CIT v W. L. Kohli & Co.*, (1987) 165 ITR 492, 495 (Del)].”.

Pages 4417-4418: section 256:

On the question of *benami* [serial No. (5)], reference may also be made to *Saraf Bros. v CIT*, (1987) 166 ITR 414 (Raj).

Page 4419: section 256:

On the subject about genuineness of a firm [serial No. (15)], reference may also be made to *CIT v Mithalul Ashok Kumar*, (1986) 159 ITR 209 (MP) (question of fact); *CIT v Sham Lal Kewal Krishan*, (1986) 159 ITR 330 (Punj) (question of fact); *CIT v Brij Bhushan Lal Suresh Kumar*, (1986) 159 ITR 825 (Punj) (question of law); *Mahadeo Biscuits and Confectionery Works v CIT*, (1987) 166 ITR 411 (MP) (question of fact); *CIT v Mahendra Kumar Sethiya*, (1987) 166 ITR 475 (MP) (question of fact).

Page 4420: section 256:

On the subject about discharge of onus [serial No. (23)], reference may also be made to *CIT v Orissa Corporation P. Ltd.*, (1986) 159 ITR 78 (SC); *CIT v Lohaty Bros. (P.) Ltd.*, (1987) 164 ITR 730 (Cal).

Page 4433: section 256:

After serial No. (179), giving instances of question of fact, *add*,—

- “(180) Proportion of a particular expenditure eligible for weighted deduction is a question of fact [*CIT v Raunaq International Ltd.*, (1986) 158 ITR 701 (Del)].
- (181) Determination of quantum of expenditure is a question of fact [*CIT v Golecha Firms (P.) Ltd.*, (1987) 164 ITR 753 (Raj)].
- (182) Whether the Tribunal has exercised its discretion properly to allow or not to allow raising of a new ground [*CIT v Srimal Rikabchand & Co.*, (1987) 166 ITR 193 (Karn)].
- (183) Whether a business was in fact carried on is a question of fact [*CIT v Dadha Co.*, (1987) 166 ITR 656 (Ker)].
- (184) Finding that the statement of the person concerned was intrinsically not worthy of credence is one of fact [*Pratap Narain Jaiswal v CIT*, (1987) Taxation 84(3)-235 (All)].
- (185) Whether the Tribunal was justified in not condoning the delay in filing the appeal is, ordinarily, a question of fact [*CIT v Jagdish Chand*, (1987) 64 CTR (Punj) 180].”.

Page 4433: section 256:

After serial No. 18, listing the cases where it was held that no question of law arose out of the Tribunal's order *add,—*

- "19. *CIT v Dalmia Dairy Industries*, (1986) 159 ITR 33 (Del).
20. *CIT v Golecha Firms (P.) Ltd.*, (1987) 164 ITR 753 (Raj).
21. *CIT v S. K. Ulagammal Achi*, (1987) 166 ITR 210 (Mad)."

Page 4435: section 256:

After line 16 from top, *add,—*

"Similarly, where the Tribunal had not considered and appreciated the material gathered by the department subsequent to the decision by the Supreme Court on the point involved, a question of law arises [*CIT v Biju Patnaik*, (1986) 160 ITR 674 (SC)].

But, a question of fact does not become a question of law merely because there has been an elaborate examination of the material [*CIT v W. L. Kohli & Co.*, (1987) 165 ITR 492, 495 (Del)]."

Page 4441: section 256:

On the subject about business income or other source income [serial No. (69)], reference may also be made to *CIT v Gambhir Mal Pandya*, (1986) 160 ITR 903 (Raj).

Page 4443: section 256:

After serial No. (99), giving the instances of question of law, *add,—*

- "(100) Question about admission of additional evidence [*Lal Chand Des Raj Singh Hukam Chand v CIT*, (1987) 163 ITR 360 (Punj)].
- (101) Question about allowability of a particular expenditure in one of more years [*Jhalani Construction (P.) Ltd. v CIT*, (1987) 61 CTR (Del) 224].

Also see, *Bombay Motors v CIT*, (1987) 165 ITR 523 (Raj); *Raja Baldeodas Birla Santati Kosh v CIT*, (1987) 164 ITR 551 (Raj); *Hansalaya Properties v CIT*, (1987) 64 CTR (Del) 103."

Page 4445: section 256:

Lines 5-6 of serial No. (3): The decision in *H. Holck Larsen v CIT* [(1972) 85 ITR 285 (Bom)] has been affirmed in *CIT v H. Holck Larsen* [(1986) 160 ITR 67 (SC)].

Page 4450: section 256:

At the end of footnote No. 1, *add,—* "Also see, *CIT v Smt. Minal Rameshchandra*, (1987) 167 ITR 507 (Guj) [holding that a question raised before, but not considered by, the Tribunal arises out of the order of the Tribunal]."

Pages 4450-4451: section 256:

At the end of footnote No. 3, *add*,— “Also see, *Vineet Talkies v CIT*, (1986) 160 ITR 468 (MP); *CIT v Golecha Firms (P.) Ltd.*, (1987) 164 ITR 753 (Raj); *CIT v Laxmi Dyeing & Finishing Factory*, (1987) 164 ITR 789 (Punj); *CIT v Jai Ram Prasad*, (1987) 165 ITR 443 (Pat); *CIT v Sardar Kehar Singh*, (1987) 167 ITR 556 (Raj); *CIT v Dharam Singh Babek Singh*, (1986) 56 CTR (Del) 205; *CIT v B. N. Kalani & Sons*, (1986) Taxation 81(3)-112 (MP); *Combined Transport Co. (P.) Ltd. v CIT*, (1986) Taxation 81(3)-406 (MP); *CIT v Roopchand Mannalal*, (1987) 30 Taxman 610 (MP) [holding that when a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order].”.

Page 4454: section 256:

After line 14 from top, *add*,—

“A question falling outside the purview of the appellate order made by the first appellate authority as also of the appellate order passed by the Tribunal cannot be said to arise out of the Tribunal’s appellate order [*Durga Dass Aggarwal & Co. v CIT*, (1987) 34 Taxman 460, 464 (Punj)]. In that case, the question regarding the validity of the notice of demand was held not arising from the Tribunal’s appellate order passed in an appeal against a penalty order under section 271(1)(c).”.

Pages 4455-4456: section 256:

On the subject “*Consolidated appellate order—whether single or multiple applications necessary?*”, reference may also be made to *Union of India v ITAT*, (1987) 164 ITR 600 (MP).

Page 4456: section 256:

On the subject “*Reference application under signature of the authorised representative*”, reference may also be made to *CIT v ITAT*, (1987) 167 ITR 250 (Mad).

Page 4458: section 256:

After line 18 of the paragraphs titled “*Condonation of delay*”, *add*,—

“In *U. P. State Road Transport Corporation v ITAT* [(1986) 159 ITR 642 (All)], the writ petition filed by the assessee was dismissed on the ground that alternative remedy by way of reference was available. After obtaining a certified copy of the order passed on writ petition, the assessee made an application for reference, which was delayed by six days. The Tribunal refused to condone the delay. It was held that, in the facts of the case, the delay, which was due to the time spent in obtaining certified copy of the High Court’s order on writ petition, was to be condoned. The Tribunal’s order was quashed and it was directed to treat the reference application as having been filed within time.”.

Pages 4461-4464: section 256:

On the subject "*The opposite party cannot raise a new question unless he himself had made an application*", reference may also be made to—

- (1) *CIT v Braithwaite & Co.*, (1986) 159 ITR 772 (Bom).
- (2) *CIT v M. N. Nadkarni*, (1986) 161 ITR 544 (Bom).
- (3) *CIT v Indian Standard Metal Co. Ltd.*, (1987) 163 ITR 763 (Bom).
- (4) *CED v Pannalal Sethi*, (1987) 164 ITR 698 (Cal).
- (5) *CIT v P. Muncherji & Co.*, (1987) 167 ITR 671 (Bom).
- (6) *U. P. Forest Corporation v CIT*, (1987) 167 ITR 827 (All).
- (7) *CIT v E. H. Katnawala & Co.*, (1987) 63 CTR (Bom) 245.
- (8) *CIT v Aditya Mills*, (1987) 168 ITR 43 (Raj).

Pages 4465-4467: section 256:

On the subject "*Tribunal's duty to refer*", reference may also be made to—

(1) *CIT v Gulab Das*, (1986) 159 ITR 24 (Raj); *CIT v Ramakrishnan*, (1986) 160 ITR 625 (Mad); *CIT v Sundaram Industries Ltd.*, (1987) 166 ITR 35 (Mad); *Mysore Breweries Ltd. v CIT*, (1987) 166 ITR 723 (Karn); *U. P. Forest Corporation v CIT*, (1987) 167 ITR 827 (All); *CIT v Babcock & Wilcox of India Ltd.*, (1986) 29 Taxman 431 (Cal); *CIT v Alim Beg Salim Bhai*, (1986) Taxation 83(3)-75 (MP); *CWT v J. C. Bhalla*, (1986) 51 CTR (Del) 286; *CIT v J. K. Synthetics Ltd.*, (1986) 24 Taxman 597 (All) [academic question need not be referred].

(2) *Madan Mohan v CIT*, (1986) 160 ITR 450 (Punj); *Smt. Renu Khanna*, (1986) 160 ITR 855 (Del); *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 484 (Punj); *R. K. Sawhney, Executor of the Estate of Late R. B. Nathu Ram v CIT*, (1987) 166 ITR 128 (Del) [question, answer self-evident, need not be referred].

(3) *State Bank of Travancore v CIT*, (1986) 160 ITR 872 (Ker) [an arguable and debatable question of law need be referred].

(4) *CWT v S. K. Dass*, (1986) 161 ITR 292 (Del) [question decided in favour of the assessee in the absence of any material available with the department, no useful purpose will be served in calling the Tribunal to refer the question].

(5) *CIT v Onkar Nath Gupta*, (1987) 163 ITR 514 (Punj); *CIT v Murti Devi Pradeep Kumar*, (1987) 163 ITR 803 (All); *CIT v Balmore Estates Pr. Ltd.*, (1987) 164 ITR 687 (Mad); *CWT v Jambukumarsingh Kasliwal*, (1987) 166 ITR 623 (MP); *CIT v K. S. R. T. C. Pension & Gratuity Fund Trust*, (1987) 167 ITR 383 (Ker); *CIT v Sagar Auto-motives Pr. Ltd.*, (1987) Tax LR 1113 (MP); *CIT v Gun Nidhi Dalmia*, (1987) 64 CTR (Del) 133; *CIT v Bhopal Co-operative Central Bank Ltd.*, (1987) Taxation 84(3)-163 (MP) [question need not be asked to be referred, if the point of law already settled by the same High Court].

(6) *Smt. Manju Rani Seth v CIT*, (1987) 163 ITR 818 (All) [question consequential to the one already referred was directed to be referred]. Also

see, *Raja Baldeodas Birla Santati Kosh v CIT*, (1987) 164 ITR 551 (Raj); *CIT v Shri Ram Smriti Nidhi*, (1987) 61 CTR (Del) 229.

(7) *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 851 (Punj) [refusal is not proper on the ground that the point of law covered by a decision of a High Court against which special leave petition was dismissed by the Supreme Court. This is so because the dismissal of the special leave petition does not clothe the order of dismissal with the authority of the decision of the Supreme Court: *CED v Pratap Singhji Ramsinghji*, (1987) 167 ITR 210 (SC)].

(8) *Subeer Singh Tamra v CIT*, (1987) 165 ITR 95 (Raj) [when once the matter has been remanded by the Tribunal to the Commissioner, the validity of the proceedings under section 263 can be questioned before him and as the entire matter has been thrown open, the question of sufficiency of service or otherwise is of no importance]. Also see, *CIT v Naresh Chandra Bhargava*, (1987) 167 ITR 288 (All).

(9) *CIT v Bhagat Bros.*, (1987) 165 ITR 660 (Punj); *CIT v Hindustan Wire Products Ltd.*, (1987) 166 ITR 758 (Punj) [question of law cannot be refused to be referred on the ground that the matter stood concluded by a decision of the Special Bench of the Tribunal].

(10) *R. K. Sawhney, Executor of the Estate of Late R. B. Nathu Ram v CIT*, (1987) 166 ITR 128 (Del); *CWT v M.N. Soi & Sons*, (1986) 51 CTR (Del) 227, 228; *CIT v Sri Virendra Kumar Gupta*, (1987) 34 Taxman 160 (All); *CIT v Anasuya Devi*, (1987) 168 ITR 587 (AP) [question, answer thereto concluded by the Supreme Court decision, need not be referred].

(11) *Durga Dass Aggarwal & Co. v CIT*, (1987) 34 Taxman 460, 464 (Punj); *CIT v Om Prakash*, (1987) 64 CTR (Punj) 147 [question, not arising out of the appellate order of the Tribunal, need not be referred].

Page 4469: section 256:

At the end of the page, *add.*—

“Writ.—An order of the Tribunal under section 256(1) refusing reference application is a *quasi-judicial* order. If the Tribunal had made a grievous mistake in respect of any such order, a writ petition against such an order is maintainable [*CIT v ITAT*, (1987) 167 ITR 250 (Mad)].

But, the mere apprehension of the petitioner that an application for reference under section 256(1) against the order of the Tribunal, which held that the petitioner was not liable to be assessed to income-tax, might be filed by the Income-tax Department and it would not be open to the assessee to raise the points which could be taken in a writ petition in reference proceedings, would not warrant the entertainment of a writ petition by the assessee, because, at that point of time, there is no surviving cause of action. However, in case an application for reference was filed by the Income-tax Department against the order of the Tribunal and entertained by the High Court, it would be open to the petitioner to file a writ petition

at that stage [*Uttar Pradesh Forest Corporation v ITAT*, (1987) 165 ITR 797, 798 (All)].

In *Mrs. Kanta P. Mehta v Union of India* [(1987) 65 CTR (Mad) 276], a writ petition challenging the orders of the Income-tax authorities and the Tribunal was held wholly misconceived and not maintainable in view of the findings of the Tribunal which, in a sense, were confirmed by the High Court by declining to entertain an application for reference under section 256(2).”.

Page 4470: section 256:

In line 15 of the paragraphs titled “*Application under section 256(2)*”, after “73 ITR 179 (Punj)”, add,— “ ; *Prem Narain Khuranna v CIT*, (1986) 162 ITR 297 (All)” [holding that where a reference application under section 256(1) is rejected on the ground that it is barred by limitation, no application lies under section 256(2) to the High Court].

Page 4472: section 256:

On the subject “*Jurisdiction under section 256(2)*”, reference may also be made to *CIT v Golecha Firms (P.) Ltd.*, (1987) 164 ITR 753 (Raj).

Page 4473: section 256:

After line 26 from top, add,—

“In *Dr. Shiv Om Varshney v ITO* [(1987) Taxation 84(3)-282 (All)], in the application for reference under section 256(2), the applicant has not formulated any questions of law nor has made any prayer that the Tribunal may be directed to draw up the statement of the case and state any questions of law to the High Court for its opinion. On the other hand, the prayer contained was for quashing of the order of the Tribunal and for passing strictures against the Income-tax Officer and other concerned authorities. It was held that the relief prayed for in the application could not be granted by the High Court in exercise of its power under section 256(2). Therefore, the application was liable to be dismissed. Also see, *CWT v Lt. Col. Bhawani Singh*, (1987) 60 CTR (Del) 163.”.

Page 4475: section 256:

After line 5 of the paragraph titled “*Period of limitation for applying to the High Court*”, add,—

“There is nothing in the context of section 256(2) to warrant the conclusion that the word ‘month’ used in it refers to a period of thirty days. The reference to six months in section 256(2) is to six calendar months and not one hundred and eighty days [*CIT v Munnalal Shrikishan*, (1987) 167 ITR 415, 416 (All)].”.

Page 4475: section 256:

At the end of the paragraphs titled “*Period of limitation for applying to the High Court*”, add,—

"Where an unsigned application for reference filed in time was returned as defective one and a signed application was filed after the expiry of the period of limitation, such an application was held barred by limitation [*CIT v Oil Village Industries Pr. Ltd.*, (1987) 165 ITR 88 (Del)]."

Pages 4476-4477: section 256:

On the subject "*Section 256(2) application possible only if the question was included in a section 256(1) application*", reference may also be made to *CIT v Golecha Firms (P.) Ltd.*, (1987) 164 ITR 753 (Raj).

Page 4479: section 256:

At the end of the last line of the paragraphs titled "*High Court Rules*", add,— "However, in *Dr. Shiv Om Varshney v ITO* [(1987) Taxation 84(3)-282 (All)], the irregularity in presenting the reference application through post was condoned as the petitioner himself appeared in person and stated that he was not aware of the procedure of the High Court in that regard."

Page 4481: section 256:

Lines 8 and 7 from bottom: The decision in *CIT v Patnaik & Co. Pr. Ltd.* [(1979) 117 ITR 388 (Ori)] has been reversed, on facts, in *Patnaik & Co. Ltd. v CIT* [(1986) 161 ITR 365 (SC)].

Pages 4481-4483: section 256:

On the subject "*Material facts to be clearly stated*", reference may also be made to *CIT v Tata Engineering Locomotive Co. Ltd.*, (1987) 163 ITR 327 (Bom).

Page 4487: section 257:

Before the paragraph titled "*Supreme Court Rules*", add,—

"In *National Soap Mills v CIT* [SLP (Civil) No. 7809 of 1983: (1985) 155 ITR (St.) 66 (SC)], their Lordships of the Supreme Court has disposed, by an order dated 26-8-1985, of a special leave petition by the assessee against an order dated 11-1-1983 of the Delhi High Court in ITC No. 39 of 1982 declining to call for a statement of case on the question whether the assessment of a partner of a firm precluded the Income-tax Officer from going into the question of the genuineness of the firm and refusing registration, by calling for a direct reference of the question to the Supreme Court under section 257."

Page 4491: section 258:

After serial No. 10, listing the cases where the Court directed the Tribunal to make a supplementary statement of the case, add,—

- "11. *Dashrath Prasad Dubey v CIT*, (1986) 159 ITR 149 (MP).
12. *CIT v Purshottam Jorabbai & Co.*, (1986) 160 ITR 153 (MP).

13. *CIT v Tata Engineering Locomotive Co. Ltd.*, (1987) 163 ITR 327 (Bom).
14. *Raja Baldeodas Birla Santati Kosh v CIT*, (1987) 164 ITR 551, 558, 561 (Raj).".

Pages 4495-4498: section 258:

On the subject "*Absence of proper finding—two courses open*", reference may also be made to *Tribhovandas Vithaldas v CIT*, (1986) 159 ITR 236 (Guj); *Bachittar Singh v CIT*, (1984) 39 CTR (Punj) 312.

Page 4505: section 260:

In line 7 of the paragraph "*No power to withdraw*", after "141 ITR 593 (MP)", add,— " ; *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v CIT*, (1987) Taxation 86(3)-193 (MP)" [holding that if the parties do not want to pursue a reference after it has been made by the Tribunal, the Court can decline to answer the questions referred].

Page 4508: section 260:

After line 10 from top, add,—

"In *CIT v S. M. Mehta* [(1987) 63 CTR (Bom) 133], the High Court declined to answer the question referred at the instance of the Commissioner because, inspite of adjournment granted, the revenue did not produce requisite number of the printed copies of the statement of the case which the Commissioner of Income-tax undertook to produce.

In *CED v Mrs. Kamla Kapur* [(1987) 63 CTR (Bom) 342], the High Court returned the reference with the question unanswered for lack of service."

Pages 4508-4512: section 260:

On the subject "*Arguments to be confined to questions referred*", reference may also be made to—

(1) *Bajinath Brijmohan & Sons P. Ltd. v CIT*, (1986) 161 ITR 234, 237 (Bom) [The assessee was held not entitled to raise a controversy which was not permitted by the question referred].

(2) *CWT v Shivaram Singh*, (1987) 163 ITR 773, 798 (Pat) [A point not agitated before the Tribunal was not allowed to be agitated by the High Court].

(3) *Cement Distributors Ltd. v CIT*, (1986) 24 Taxman 777, 779 (Del) [The question referred was held wide enough to cover the entire controversy].

Pages 4512-4513: section 260:

On the subject "*Question sought to be, but not, referred by the Tribunal cannot be argued unless section 256(2) was resorted to*", reference may also be made to *Mahajan Bros. v CST*, (1987) Tax LR 2142 (MP).

Pages 4513-4515: section 260:

On the subject "*No power to raise or answer new questions*", reference may also be made to—

(1) *Moti Trust v CIT*, (1987) 165 ITR 367 (Raj) [A question not raised before the Tribunal cannot be considered by the High Court].

(2) *S. Rajendra Singh v CIT*, (1987) 165 ITR 712 (MP) [The High Court has no jurisdiction to consider a new question of law which has not been referred particularly when the Tribunal declined to refer that question and the assessee, having a right to apply under section 256(2) for an order directing reference, failed to do so]. Also see, *R.B. Shreeram Durgaprasad and Fatechand Narsinghdas (Export Firm) v CIT*, (1987) 168 ITR 619 (Bom).

Pages 4516-4517: section 260:

On the subject "*The vires of a legal provision cannot be challenged in a reference*", reference may also be made to *Mysore Breweries Ltd. v CIT*, (1987) 166 ITR 723 (Karn).

Pages 4518-4519: section 260:

On the subject "*Agreed statement*", reference may also be made to *D. L. F. United Ltd. v CIT*, (1986) 161 ITR 709, 713 (Del).

Pages 4519-4520: section 260:

At the end of the paragraphs titled "*Finality of Tribunal's facts in considering questions of law and of fact*", add,—

"When a conclusion had been reached on an appreciation of a number of facts established by the evidence, whether that was sound or not must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting as a whole. Where an ultimate finding on an issue was an inference to be drawn from the facts found, on the application of any principles of law, there would be a mixed question of law and fact, and the inference from the facts found was in such a case, a question of law. But where the final determination of the issue equally with the finding or ascertainment of the basic facts did not involve the application of any principle of law, an inference from the facts could not be regarded as one of law. The proposition that an inference from facts was one of law was, therefore, correct in its application to mixed questions of law and fact, but not to pure questions of fact. In the case of pure questions of fact, an inference from the facts was as much a question of fact as the evidence of the facts. Where there is a finding of fact and unless it could be said that all the relevant facts had not been considered in a proper light, no question of law arises [*Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1987) 168 ITR 705, 712 (SC)].".

Pages 4522-4523: section 260:

At the end of footnote No. 1, add,— "Also see, *CIT v T. S. Hajee Moosa & Co.*, (1985) 153 ITR 422, 436 (Mad); *Patnaik & Co. Ltd. v*

CIT, (1986) 161 ITR 365, 367 (SC); *M. L. Gupta v CIT*, (1987) 163 ITR 155 (Raj) [holding that the High Court can disturb the finding if there is no evidence to support the same. But, if the conclusion is based on some evidence, such course is not open: *CIT v Orissa Corporation P. Ltd.*, (1986) 159 ITR 78 (SC)].”.

Page 4523: section 260:

At the end of footnote No. 2, listing cases on the point of perverse finding, *add*,— “Also see, *CIT v Thakur Ram Ganga Prasad (P.) Ltd.*, (1986) 158 ITR 409 (Pat); *M. L. Gupta v CIT*, (1987) 163 ITR 155 (Raj).”.

Page 4524: section 260:

At the end of footnote No. 9, *add*,— “Also see, *CIT v South Indian Rubber Products*, (1987) 166 ITR 687 (Ker) [holding that the finding of the Tribunal can be disturbed where no person judicially acting could have come to such a conclusion].”.

Page 4524: section 260:

Footnote No. 10: The decision in *CIT v Patnaik & Co. (Pr.) Ltd.* [(1974) Tax LR 941 (Ori)=(1979) 117 ITR 388 (Ori)] has been reversed, on facts, in *Patnaik & Co. Ltd. v CIT* [(1986) 161 ITR 365 (SC)].

Page 4525: section 260:

At the end of the page, *add*,—

“Where a finding is based on evidence on record, it is not vitiated due to non-consideration of facts within the knowledge of the assessee and not brought before the Tribunal [*Dey's Medical Stores Mfg. (P.) Ltd. v CIT*, (1986) 162 ITR 630 (Cal)].”.

Page 4527: section 260:

At the end of serial No. (9), listing the cases where the finding or conclusion of the Tribunal was held not to be perverse or unreasonable, *add*,—

“(10) *CIT v Thakur Ram Ganga Prasad (P.) Ltd.*, (1986) 158 ITR 409 (Pat).”.

Pages 4527-4529: section 260:

On the subject “*Specific question necessary for challenge*”, reference may also be made to *Krishna Agrico Electrical Industries v CIT*, (1986) 159 ITR 35 (Pat); *Patnaik & Co. Ltd. v CIT*, (1986) 161 ITR 365, 367 (SC); *CIT v Hari Ram Sri Ram*, (1987) 167 ITR 578, 582 (All).

Pages 4529-4531: section 260:

On the subject “*High Court's jurisdiction to go behind the facts found by the Tribunal*”, reference may also be made to—

(1) *Kalpaka Oil Mills v CIT*, (1986) 160 ITR 604 (Ker) [The High Court has no authority to go behind the findings of the Tribunal or to question the statements of fact made by the Tribunal].

(2) *D. L. F. United Ltd. v CIT*, (1986) 161 ITR 709 (Del) [The

High Court cannot go behind the statement of facts made by the Tribunal].

(3) *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1987) 168 ITR 705, 712 (SC) [The High Court cannot go behind the Tribunal's findings of fact].

Pages 4533-4534: section 260:

At the end of line 20 of the paragraph titled "*No reappraisal of evidence possible*", add,— "Also see, *Krishna Agrico Electrical Industries v CIT*, (1986) 159 ITR 35, 40 (Pat); *Patnaik & Co. Ltd. v CIT*, (1986) 161 ITR 365 (SC); *CIT v Moti Chand Khajanchi*, (1987) 34 Taxman 498, 504 (Raj).

Also, in *CIT v T. I. & M. Sales Ltd.* [(1987) 166 ITR 93, 101 (SC)], it has been laid down that, ordinarily, the High Court should have declined to use the assertions in an affidavit for the purpose of recording findings of fact and if, at all, in its opinion the affidavit was to be utilised, the matter should have gone before the Tribunal for a fresh disposal of the appeal. However, the High Court was held justified in utilising the affidavit without putting back to the stage of appeal before the Tribunal where the assessment related to periods about a quarter of a century back and the department had waived its right to dispute the facts asserted in the affidavit on the one hand by not challenging its admissibility and on the other by not disputing the contents thereof.

In *CIT v Standard Mercantile Co.* [(1987) 166 ITR 39 (Pat)], the matter was remanded to the Tribunal as the new facts were stated before the High Court on affidavit.

But in *CWT v Mary Rockie* [(1987) 167 ITR 153 (Ker)], it has been held that the assessee is not entitled to a fresh opportunity to improve the evidence. Similarly, a remand is not possible for giving an opportunity to the party concerned to introduce fresh facts to make out a totally new case [*CIT v Smt. Dhirajben R. Amin*, (1983) 141 ITR 875, 886 (Guj); *CIT v Harikishan Jethalal Patel*, (1987) 168 ITR 472, 480 (Guj)].

Pages 4534-4535: section 260:

At the end of footnote No. 1, relating to the subject that the High Court can decline to answer a question of law which is purely academic, add,— "Also see, *Smt. Josephine Pinto v CIT*, (1986) 158 ITR 674, 680-81 (MP); *CIT v Mrs. D. C. Davis*, (1986) 161 ITR 518, 523 (Karn); *Addl. CIT v Suessin Textile Ball Bearing Ltd.*, (1987) 163 ITR 582 (Bom); *A.K. Allarakha v CIT*, (1987) 166 ITR 466 (Raj); *Premsookh Cinema v CIT*, (1987) Taxation 85(3)-79 (MP).".

Page 4535: section 260:

At the end of footnote No. 2, relating to the subject that the High Court can decline to answer a question of law which does not arise out of the order of the Tribunal, add,— "Also see, *CIT v Parakh Kothi Ltd.*, (1987) 165 ITR 104 (Cal); *Combined Transport Co. (P) Ltd. v CIT*, (1986)

57 CTR (MP) 322; *Smt. K. Ramabai v CIT*, (1987) 163 ITR 671 (Karn); *CIT v Dadu Wala & Co.*, (1987) Taxation 86(3)-308, 310 (Raj); *Raja Vikramaditya Singh v CIT*, (1987) Tax LR 888, 890 (MP).”.

Page 4536: section 260:

After line 18 from top, *add*,—

“In *CIT v Agarpara Co. Ltd.* [(1986) 158 ITR 78 (Cal)], the High Court declined to answer the question as the Tribunal neither found out the facts necessary for determination of the question nor applied the correct legal principles.

In *CIT v Delta Jute Mills Co. Ltd.* [(1986) 159 ITR 220 (Cal)], the High Court declined to answer the question because the relevant factors were not gone into by the Tribunal and the matter was remanded to the Tribunal for considering the relevant factors.

In *CIT v M. Parthasarathy* [(1987) 163 ITR 655 (Karn)], the High Court declined to answer the question as the Tribunal did not decide the appeal on merits.

In *Mahadeo Biscuits & Confectionery Works v CIT* [(1987) 166 ITR 411 (MP)], the High Court declined to answer the question as the same was one of fact.”.

Pages 4536-4538: section 260:

On the subject “Power to reframe a question”, reference may also be made to—

(1) *Smt. Josephine Pinto v CIT*, (1986) 158 ITR 674 (MP).

(2) *CIT v Smt. Mamta Narottamdas*, (1986) 162 ITR 365, 370 (Guj) [A question can be reframed in order to bring out the real controversy in issue]. Also see, *Smt. K. Ramabai v CIT*, (1987) 163 ITR 671 (Karn); *Parsi Zorastrian Anjuman Trust Mhow v CIT*, (1987) 163 ITR 832, 834 (MP); *Raja Vikramaditya Singh v CIT*, (1987) Tax LR 888, 890 (MP); *Raj Stores v CIT*, (1987) Taxation 86(3)-271, 274 (All).

(3) *CIT v Cap Steel Ltd.*, (1986) 162 ITR 533 (Karn) [A question can be reframed where it contained inappropriate wordings].

The power of reframing cannot be exercised—

—for framing an altogether new question [*Smt. K. Ramabai v CIT*, (1987) 163 ITR 671, 672 (Karn)].

—for raising a question which was declined to be referred by the Tribunal [*S. Rajendra Singh v CIT*, (1987) 165 ITR 712, 715 (MP)].

Page 4539: section 260:

At the end of the paragraph titled “No power to remand”, *add*,—

“However, in the facts of *Champa Properties (P.) Ltd. v CIT* [(1987) 166 ITR 367 (Cal)], the matter was remanded to the Tribunal with a direction that the Tribunal should go into the question of title and deter-

mine the same. Also see, *Ambika Prasad Sonar v CIT*, (1987) 168 ITR 444, 455 (All).”.

Pages 4542-4543: section 260:

On the subject “*Power to review*”, reference may also be made to *Addl. CIT v Hasmat Rai Raj Pal*, (1987) 33 Taxman 23 (Del) [holding that the High Court cannot exercise its inherent jurisdiction to review or recall its previous judgment to do justice].

Page 4543: section 260:

At the end of the paragraph titled “*Inherent power to correct errors*”, add,—

“At the same time, the High Court, while deciding reference application, is exercising its advisory jurisdiction, which is special in nature and entitles the court to exercise only those power which have been conferred by the Income-tax Act, 1961. Therefore, the High Court cannot under section 151 of the Code of Civil Procedure, 1908, correct such mistakes, for which the remedy lies in filing an appeal. Further, the granting of the application would result in reviewing the judgment, which is not even the scope of the said section 151 [*CIT v Radha Swami Satsang*, (1987) 167 ITR 121 (All)].”.

Pages 4544-4545: section 260:

On the subject “*Desirability of uniform interpretation*”, reference may also be made to *Sundaram Industries Ltd. v CIT: Industrial Chemicals v CIT*, (1986) 159 ITR 646 (Mad); *CIT v Hari Nath & Co.*, (1987) 168 ITR 440 (All); *Jamnadas Madhavji & Co. v ITO*, (1986) 58 CTR (Bom) 1.

However, in *CGT v B.K. Sampangiram* [(1986) 160 ITR 188, 197 (Karn)], the Karnataka High Court has taken a view different from that of the other High Courts which had held the field for nearly two decades because the earlier view was contrary to the well-established tenets of law on the subject.

Pages 4545-4546: section 260:

On the subject “*Binding nature of High Court's judgment*”, reference may also be made to *Standard Radiators v CIT*, (1987) 165 ITR 178, 190-91 (Guj).

Page 4547: section 260:

At the end of the paragraphs titled “*Precedents*”, add,—

“A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision.

A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation [*Prakash Amichand Shah v State of Gujarat*, AIR 1986 SC 468, 480].

An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases, there is good reason to disregard the later decision. Such occasions in judicial history are not rare [*Prakash Amichand Shah v State of Gujarat*, AIR 1986 SC 468, 482].

When a particular state of law has been prevailing for decades in a particular area and the people of that area having adjusted themselves with that law in their daily life, it is not desirable that the court should upset such law except under compelling circumstances. It is for the Legislature to consider whether it should change such law or not [*Thamma Venkata Subbamma v Thamma Rattamma*, AIR 1987 SC 1775, 1779].

Precedents, as observed by Lord Macmillan, should be 'stepping stones and not halting places' [*Birch v Brown*, (1931) AC 605, 631]. But, Justice Cardozo's caution should not go unheeded that the weekly change in the composition of the court ought not to be accompanied by changes in its rulings [*Punjab University v Vijay Singh Lamba*, AIR 1976 SC 1441, 1446].

The law of precedents is that a decision of a Division Bench given in an earlier case is binding on a subsequent Bench [*CIT v Hari Nath & Co.*, (1987) 168 ITR 440, 443 (All)].

Where an order is made in the peculiar facts and circumstances of a particular case, it will not serve as a precedent [*Provident Fund Inspector v Jaipur Textile*, AIR 1987 SC 1738].”.

Page 4553: sections 261-262:

At the end of the paragraphs titled “*Effect of the Supreme Court decision*”, add,—

“The effect of the Supreme Court decision upholding the *vires* of a particular provision is that that provision is a valid piece of legislation at all times [*Taurian Tubes v CIT*, (1987) 166 ITR 629, 631 (Pat)].”.

Pages 4553-4557: sections 261-262:

On the subject “*Binding force of Supreme Court judgment*”, reference may also be made to—

(1) *CIT v Shri Agastyar Trust*, (1984) 149 ITR 609 (Mad) [In view of Article 141 of the Constitution of India, the High Court cannot go behind the decision of the Supreme Court to see whether it proceeds on a correct basis or not].

(2) *CIT v Smt. Minal Rameshchandra*, (1987) 167 ITR 507 (Guj) [The *ratio* or principle laid down by the Supreme Court is binding on the High Courts but each and every word stated by the Court while deciding a case does not become the law of the land].

(3) *CWT v Dalip Kumar Worah*, (1987) 167 ITR 811, 816 (Pat—FB) [When once an earlier decision of the Supreme Court has, subsequently, been considered by the Supreme Court culling out the *ratio* of the earlier decision, the *ratio* of the earlier decision as enunciated in the later decision is binding on the High Court].

(4) *Union of India v Godfrey Philips India Ltd.*, AIR 1986 SC 806, 815 [A co-ordinate Bench of the Supreme Court cannot differ from the decision of an earlier Bench. Where a subsequent co-ordinate Bench finds itself unable to agree with an earlier Bench decision, the matter should be referred to a larger Bench].

(5) *Ujagar Prints v Union of India*, (1987) 167 ITR 904, 908 (SC) = AIR 1987 SC 874, 876 [Judicial discipline requires that a Bench of two Judges should not disregard the decision of a Bench of three Judges but if the Bench of two Judges is inclined to disagree with what has been said by the Bench of three Judges on the ground that it does not represent the correct law on the subject, the case should be referred by the Bench of two Judges to a larger Bench].

(6) *Gujarat Housing Board v Nagajibhai Laxmanbhai*, AIR 1986 Guj 81, 88 (FB) [When there are two conflicting decisions of the Supreme Court consisting of equal number of Judges, the later of the two decisions should be followed by the High Courts and other Courts].

(7) *Oriental Fire & General Insurance Co. Ltd. v B. Parvathamma*, AIR 1986 Karn 63, 66 [When there are conflicting decisions of the Supreme Court, the later decision rendered by a larger Bench is to be followed].

(8) *State v Maksudan Singh*, AIR 1986 Pat. 38, 43 (FB) [So far as the judgments of the Supreme Court are concerned, constitutional sanction is given, by Article 141, to their binding nature. The American precedents can have a persuasive value].

(9) *Ram Autar Santosh Kumar v State of Bihar*, AIR 1987 Pat 13, 21 (FB) [When a later judgment expresses a view which is in headlong conflict with an earlier judgment, it can be said that the later judgment is in a way *per incuriam*, i.e., through inadvertence].

(10) *Amar Singh Yadav v Shanti Devi*, AIR 1987 Pat 191 (FB) [Where there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately].

(11) *Har Narain v Vinod Kumar*, AIR 1987 All 319 [The Supreme Court decision is binding on all Courts not only when it is shown before the pronouncement of the judgment by the concerned Court but also when it is brought to the notice of the Court even after pronouncement of the judgment].

(12) *CIT v Andhra Pradesh Riding Club*, (1987) 168 ITR 393, 404 (AP) [Even an *obiter dictum* of the Supreme Court is binding on the High Courts].

Pages 4557-4558: sections 261-262:

On the subject "*Appeal to the Supreme Court under section 261*", reference may also be made to *CIT v Chhedi Lal*, (1987) 163 ITR 304 (All).

Page 4559: sections 261-262:

On the subject "*Period of limitation for making an application for a certificate of fitness*", reference may also be made to *CIT v Ananda Bazar Patrika (P.) Ltd.*, (1987) 167 ITR 268 (Cal); *CIT v Nanda Lal Kanoria*, (1987) Tax LR 515 (Cal).

Page 4563: sections 261-262:

Before line 9 from bottom, *add*,—

"The language of section 261 shows that the existence of a substantial question of law is not the sole reason for grant of a certificate of fitness to appeal to the Supreme Court. Where a subsequent decision of the Supreme Court has rendered the decision of the High Court incorrect, the only remedy of a party to get the judgment of the High Court corrected is by appealing to the Supreme Court [*CIT v Warner Hindustan Ltd.*, (1987) 165 ITR 692, 696-97 (AP)].".

Page 4564: sections 261-262:

After serial No. (23), listing the cases where a certificate of fitness was granted, *add*,—

- "(24) *CIT v Martin & Harris P. Ltd.*, (1985) 154 ITR 460, 466 (Cal).
- (25) *Nawab Mir Barkat Ali Khan Bahadur v CED*, (1986) 158 ITR 259, 277 (AP).
- (26) *H. S. Mukherjee v CIT*, (1986) 161 ITR 846, 856 (Cal).
- (27) *Joshi & Co. v CIT*, (1986) 162 ITR 268, 286 (Cal).
- (28) *James Finlay & Co. Ltd. v CIT*, (1987) 163 ITR 495 (Cal).
- (29) *Indian Oxygen Ltd. v CIT*, (1987) 164 ITR 466, 486 (Cal).
- (30) *CIT v Warner Hindustan Ltd.*, (1987) 165 ITR 692 (AP).
- (31) *Shalimar Chemical Works Pr. Ltd. v CIT*, (1987) 167 ITR 13, 21 (Cal).
- (32) *Assam Oil Co. Ltd. v CIT*, (1987) 168 ITR 159 (Cal).
- (33) *CIT v Narbharam Popat Bhai & Sons*, (1987) 63 CTR (MP) 68 (FB).".

Page 4564: sections 261-262:

After serial No. (10), listing the cases where a certificate of fitness was not granted, *add*,—

- "(11) *Mohammadi Begum v CIT*, (1986) 158 ITR 662, 673 (AP).
- (12) *IAC v N. Vajram Setty*, (1986) 159 ITR 746 (Karn).
- (13) *ITO v Shriram Bearings Ltd.*, (1987) 164 ITR 419, 430-31 (Cal) [It may be noted that the Supreme Court has granted against this judgment a special leave petition under Article 136: (1986) 160 ITR (St.) 74 (SC)].

- (14) *Basanta Ram Kedarnath v. ITO*, (1987) 165 ITR 777, 786 (Cal).
- (15) *CIT v Ananda Bazar Patrika (P.) Ltd.*, (1987) 167 ITR 268, 272 (Cal).
- (16) *Aditya Minerals Pr. Ltd. v CIT*, (1987) 167 ITR 774, 780 (AP).
- (17) *CIT v Nanda Lal Kanoria*, (1987) Tax LR 515 (Cal).
- (18) *Barick Screen Corporation v CIT*, (1987) 33 Taxman 444 (Cal).
- (19) *CIT v Ram Gopal Thirani & Sons*, (1987) 34 Taxman 165 (Cal).
- (20) *CIT v Orient Paper Mills Ltd.*, (1987) 34 Taxman 249, 257 (Cal)."

Pages 4564-4565: sections 261-262:

After line 18 of the paragraph titled "*Supreme Court's appellate jurisdiction under section 261 of the Income-tax Act*", *add,—*

"The certificate of fitness to appeal issued by the High Court need not mention each question in respect of which an appeal could be filed. The High Court has to state the reasons for the grant of a certificate but once the certificate is granted and an appeal filed pursuant to it, there will be no restriction, either in the scope of the appeal or the jurisdiction of the appellate court to deal with it [*CIT v Warner Hindustan Ltd.*, (1987) 165 ITR 692, 697 (AP)]."

Page 4568: sections 261-262:

In line 5 from top, after "157 ITR 549, 554 (Karn)", *add,—* " ; *Hiralal Nemchand Shah v Union of India: Nandlal Tejmal Kothari v IAC*, (1986) 162 ITR 180 (Karn)" [where a certificate of fitness to appeal to the Supreme Court under Article 133 was granted].

Page 4568: sections 261-262:

In lines 18-19 from top, after "153 ITR 382, 384 (All)", *add,—* " ; *IAC v N. Vajram Setty*, (1986) 159 ITR 746, 749 (Karn)" [where a certificate of fitness to appeal to the Supreme Court under Articles 133 and 134A was not granted].

Page 4569: sections 261-262:

At the end of the page, *add,—*

"The jurisdiction of the Supreme Court under Article 136 of the Constitution extends to the dismissal of the petition for special leave to appeal not merely having regard to the merits of the controversy between the parties but also on the ground that the court does not consider it fit *ex debito justitiae* to grant a certificate [*CED v Pratap Singhji Ramsinghji*, (1987) 167 ITR 210, 213-14 (SC)].

In the facts of *Union of India v Visveswaraya Iron & Steel Ltd.* [(1987) 166 ITR 64 (SC)], the delay in filing a special leave petition was not condoned. Further, leave to file a supplemental affidavit was also refused."

Page 4570: sections 261-262:

At the end of the paragraphs titled "*Limitations for an appeal to Supreme Court under Article 136*", *add*,—

"In an appeal by special leave from a decision of the High Court, the Supreme Court will not permit questions of fact to be raised unless there is material evidence which had been ignored by the High Court or the finding reached by it is perverse [*Union of India v Rajeswari & Co.*, (1986) 161 ITR 60, 64 (SC)].".

Page 4571: sections 261-262:

Before line 11 from bottom, *add*,—

"In *Onkarlal Nandlal v State of Rajasthan* [(1987) Tax LR 1989 (SC) = AIR 1986 SC 2146], a special leave has been granted against the order of the Commercial Tax Officer."

Pages 4572-4573: sections 261-262:

At the end of the paragraphs titled "*Impact of dismissal of special leave petition*", *add*,—

"It is well-settled that the dismissal by the Supreme Court of a petition for special leave to appeal under Article 136 of the Constitution of India against a decision *in limine* does not clothe the decision with the authority of the Supreme Court. The jurisdiction of the Supreme Court under Article 136 is discretionary and the dismissal of a special leave petition cannot be construed as an affirmation by the Supreme Court of the decision against which special leave to appeal was sought [*Nawab Sir Mir Osman Ali Khan v CWT*, (1986) 162 ITR 888, 898 (SC), *approving*, *Sahu Govind Prasad v CIT*, (1983) 144 ITR 851, 863 (All—FB); *CED v Pratap Singhji Ram-singhji*, (1987) 167 ITR 210, 214 (SC). Also see, *CIT v Oswal Woollen Mills Ltd.*, (1987) 163 ITR 851 (Punj); *Ganesh Land Organisation v CIT*, (1987) 168 ITR 527 (Guj)].

It is not the policy of the Supreme Court to entertain special leave petitions and grant leave under Article 136 of the Constitution of India save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. It has also become necessary for the Supreme Court to restrict the intake of fresh cases having regard to the heavy backlog of work in the court. The dismissal of a special leave petition *in limine* by a non-speaking order does not, therefore, justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by the court. The effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons for its dismissal must, by necessary implication, be taken to be that the court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached due to several reasons.

Neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of the Supreme Court dismissing

the special leave petition operate to bar the trial of identical issues in a separate proceeding, namely, a writ proceeding before the High Court, merely on the basis of an uncertain assumption that the issues must have been decided by the court at least by implication. It is not correct or safe to extend the principle of *res judicata* or constructive *res judicata* to such an extent so as to found it on mere guesswork [*Indian Oil Corporation Ltd. v State of Bihar*, (1987) 167 ITR 897, 901, 901-2 (SC)].”.

Pages 4578-4579: section 263:

On the subject “*Conditions requisite for exercise of power under section 263*”, reference may also be made to *Jagadhri Electric Supply & Industrial Co. v CIT*, (1987) 166 ITR 143 (Punj); *Venkatakrishna Rice Co. v CIT*, (1987) 163 ITR 129, 137 (Mad). Cf. *Shivaputrappa Channappa Mungoli v Ag ITO*, (1986) 160 ITR 123 (Karn).

The error envisaged by section 263 is not one which depends on possibility or guesswork, but it should be actually an error either of fact or of law [*CIT v Trustees of Anupam Charitable Trust*, (1987) 167 ITR 129 (Raj)].

Page 4579: section 263:

Before line 15 from bottom, *add*,—

“**Scope of section 263.**—The scope of interference under section 263 is not to set aside merely unfavourable orders and bring to tax some more money to the treasury nor is the section meant to get at sheer escapement of revenue which is taken care of by other provisions in the Act. The prejudice that is contemplated under section 263 is prejudice to the income-tax administration as a whole. Section 263 is to be invoked not as a jurisdictional corrective or as a review of a subordinate’s order in exercise of the supervisory power but it is to be invoked and employed only for the purpose of setting right distortions and prejudices to the Revenue which is a unique conception which has to be understood in the context of and in the interest of revenue administration. Such a power cannot in any manner be equated to or regarded as approaching in any way the appellate jurisdiction or even the ordinary revisional jurisdiction conferred on the Commissioner under section 264 [*Venkatakrishna Rice Co. v CIT*, (1987) 163 ITR 129 (Mad)].

Validity of the proceedings under section 263 can be questioned before CIT.—The validity of the revision proceedings under section 263 can be questioned before the Commissioner himself. This is so even where the matter has been remanded by the Tribunal to the Commissioner [*Subeer Singh Tamra v CIT*, (1987) 165 ITR 95 (Raj)].”.

Page 4580: section 263:

On the subject “*Commissioner must give reasons for passing an order under section 263*”, reference may also be made to *CIT v Kashi Nath & Co.*, (1987) Taxation 86(3)-39 (All).

Page 4581: section 263:

At the end of the paragraph titled "*Record, what it implies?*", add,—

"Though it is true that revisional jurisdiction under section 263 has to be exercised in the light of the record as it stood at the time the order was passed by the Income-tax Officer, the judgment of the High Court or the Supreme Court in another case which deals with any issue which arises in a case, cannot be said to be part of the record of that case. The relevant provisions of law and the judgments pronounced by the courts in other cases do not form part of the record of any case [*CIT v Shriram Development Co.*, (1986) 159 ITR 812, 815 (MP)].".

Page 4582: section 263:

After line 20 from top, add,—

"But, in *M. P. Financial Corporation v CIT* [(1987) 165 ITR 765 (MP)], it has been held that even under the state of law as it existed up to 30th September, 1984, an order passed by the Inspecting Assistant Commissioner (Assessment) in exercise of powers conferred on him by virtue of an order under section 125(1) was amenable to revision under section 263 in view of the provisions of section 125A(4).".

Page 4586: section 263:

After serial No. (7), discussing the cases where the exercise of power under section 263(1) was held not proper, add,—

- "(8) *CIT v G. J. Fernandez*, (1986) 160 ITR 602 (Karn) [Order of the Commissioner taking the view that the assessee was not entitled to interest under section 214 because the cheque was not given by the assessee on the last day was held not proper as the last day was a Sunday].
- (9) *Venkatakrishna Rice Co. v CIT*, (1987) 163 ITR 129 (Mad) [Income-tax Officer assessed share of income of the assessee from a joint venture in its hands. Order of the Commissioner setting aside the assessment and directing the assessment of the income of the joint venture in the hands of an AOP was held not proper as the ITO's assessment order was in accordance with law and could not be held to be erroneous].
- (10) *Jagadhri Electric Supply & Industrial Co. v CIT*, (1987) 166 ITR 143 (Punj) [Order of Commissioner cancelling the registration on the ground that losses were debited to the account of a minor was held not proper because the minor became major prior to the close of the accounting year and he chose to bear losses from the beginning of the accounting year].
- (11) *CIT v Shri Govindram Seksariya Charity Trust*, (1987) 166 ITR 580 (MP) [revisional order setting aside the assessment on the ground that the ITO allowed exemption without examining the applicability of the relevant provisions of section 13(1)(c)(ii) was held not proper as the Tribunal found that the ITO was alive

of the relevant provisions of law at the time of passing the assessment order].

- (12) *CIT v Dadha Co.*, (1987) 166 ITR 656 (Ker) [revisional order holding that the assessee-firm was not entitled to registration as no business was carried on by the assessee-firm was held not proper on the finding of the Tribunal that the assessee-firm continued to do business].
- (13) *CIT v Trustees of Anupam Charitable Trust*, (1987) 167 ITR 129 (Raj) [revisional order of the Commissioner setting aside the assessment on the ground that the trust had income from speculative business was held not proper as there was no such a categorical finding in the order].
- (14) *CIT v Ratlam Coal Ash Co.*, (1987) 34 Taxman 443 (MP) [revisional order was held not proper where the Tribunal took the view that in the facts of the case it could not be held that the Income-tax Officer had made the assessment without making proper enquiries].

Also see, *M. B. Mercantile Co. v CIT*, (1987) 35 Taxman 169 (Cal).".

Page 4587: section 263:

After serial No. (10), discussing the cases where the exercise of the power under section 263(1) was held proper, *add*,—

- "(11) *CIT v Shriram Development Co.*, (1986) 159 ITR 812 (MP) [interest on additional compensation was assessed on accrual basis. High Court taking the view that such interest is chargeable only when it was awarded by the Court. Revisional order setting aside the assessment and directing the Income-tax Officer to make a fresh assessment according to law was held proper]. Also see, *CIT v Lakshmi Narayanan*, (1986) Taxation 82(3)-256 (Mad).
- (12) *CIT v Pushpa Devi*, (1987) 164 ITR 639 (Pat); *CIT v Smt. Rambha Devi*, (1987) 164 ITR 658 (Pat); *CIT v Smt. Devi* (1987) 59 CTR (Pat) 3; *CIT v Smt. Bhagwant Kaur*, (1987) 63 CTR (Pat) 326 [spot assessment made of a lady without making any enquiry regarding source of initial capital. Order of Commissioner setting aside the assessment and directing fresh assessment after enquiring into the source of the initial capital was held proper].
- (13) *Taurian Tubes v CIT*, (1987) 166 ITR 629 (Pat) [revisional order of the Commissioner directing the Income-tax Officer to exclude borrowed capital in computing the 'capital employed' was held proper in the light of the Supreme Court decision upholding the validity of rule 19A].
- (14) *Udaipur Soap Factory v CIT*, (1987) 167 ITR 613 (Raj) [registration granted to a firm without a proper application for registra-

tion was held prejudicial to the revenue so as to justify action under section 263].”.

Page 4587: section 263:

At the end of the paragraph titled “*Erroneous order passed by ITO in implementing AAC’s directions—revisable*”, *add*,—

“At the same time, an order passed by the assessing authority implementing the order of the Tribunal cannot be revised. However, if the assessing authority makes any mistake in carrying out the directions given by the Tribunal, to that extent his order may be amenable to the revision [Cf. *Brihan Maharashtra Sugar Syndicate Ltd. v Dy. C Ag IT*, (1987) 165 ITR 279 (Bom)].”.

Page 4588: section 263:

In line 7 (excluding footnotes) from bottom, after “Taxation 73(1)-11 (Mad)”, *add*,—“; *Fancy Dyeing & Printing Works v ITO*, (1987) 166 ITR 54, 56 (Cal)” (opportunity of being heard to be given).

Page 4589: section 263:

After line 9 from top, *add*,—

“In the facts of *Fancy Dyeing & Printing Works v ITO* [(1987) 166 ITR 54 (Cal)], the Commissioner was directed to rehear the matter after giving the assessee an opportunity of being heard.”.

Pages 4592-4594: section 263:

On the subject “*Question involving charge or waiver of interest*”, reference may also be made to—

(1) *CIT v Punjab Business & Supply Co. Pr. Ltd.*, (1986) 159 ITR 664 (Punj) [Order of the Commissioner passed on the ground of non-charging of interest under section 216 was held not proper as the provisions of that section 216 were held inapplicable to the facts of the case].

(2) *CIT v Bharat Refineries Ltd.*, (1986) 162 ITR 652 (Cal) [Order of the Commissioner directing the Income-tax Officer to charge interest under section 139(8) was held not proper in the facts of the case].

Pages 4594-4595: section 263:

On the subject “*Doctrine of merger, how far forfeits Commissioner’s power?*”, reference may also be made to—

(1) *CIT v K. L. Rajput*, (1987) 164 ITR 197 (MP—FB), *approving*, *CIT v R. S. Banwarilal*, (1983) 140 ITR 3 (MP—FB) and *CIT v Mandsaur Electric Supply Co. Ltd.*, (1983) 140 ITR 677 (MP—FB) [The doctrine of merger operates only on matters which were the subject-matter of decision by the first appellate authority and has no application to matters which have not been touched by that authority. Such untouched matters may be subjected to an order under section 263(1)].

(2) *CIT v K. L. Rajput*, (1987) 164 ITR 197 (MP—FB), following, *CIT v Mandsaur Electric Supply Co. Ltd.*, (1983) 140 ITR 677 (MP—FB) [Where the order of assessment passed by the Income-tax Officer is the subject-matter of an appeal before the first appellate authority, the Commissioner is not competent to set aside the entire assessment order in exercise of his revisional powers under section 263. The decision in *CIT v R. S. Banwarilal*: (1983) 140 ITR 3 (MP—FB): does not lay down the correct law in so far as it impliedly holds that the Commissioner could, in exercise of his revisional power, set aside the entire assessment order passed by the Income-tax Officer even though the same had been made the subject-matter of an appeal before the first appellate authority]. Also see, *CIT v Simplex Metalica*, (1987) 164 ITR 202 (MP—FB).

(3) *Builders Union v CIT*, (1987) 165 ITR 716 (Ori) [The doctrine of merger has no application where a fresh assessment order has been passed by the Income-tax Officer after the original assessment order passed by the Income-tax Officer and confirmed by the first appellate authority was set aside by the Tribunal. Such fresh assessment order can be revised by the Commissioner].

(4) *General Beopar Co. (Pr.) Ltd. v CIT*, (1987) 167 ITR 86 (Cal) [When an assessment order is appealed against and an order is passed by the appellate authority, there is merger of the assessment order with the appellate order in all respects, including matters which have been merely affirmed by the appellate authority. The exceptions to this doctrine of merger are cases where the question involved cannot be the subject-matter of appeal before the appellate authority]. Also see, *CIT v P. Muncherji & Co.*, (1987) 167 ITR 671 (Bom); *Remex Constructions/Remex Electricals v ITO*, (1987) 166 ITR 18 (Bom).

Page 4600: section 263:

After line 6 of the paragraph titled “*Order under section 171*”, add,—

“However, in case of a partial partition, service of a notice by the Commissioner on any one member of the family has been held to be sufficient by virtue of the provisions of section 282(2) [*CIT v Laxmi Dyeing & Finishing Factory*, (1987) 164 ITR 789, 792 (Punj)].”.

Page 4601: section 263:

In line 11 of the paragraph titled “*Non-initiation of penalty proceedings, whether assessment can be revised under section 263(1)?*”, after “156 ITR 693 (Del)”, add,—“; *CWT v A. N. Sarvaria*, (1986) 161 ITR 694 (Del)” [holding that where penalty proceedings were not initiated before or at the time of making the assessment, the Commissioner cannot invoke power under section 263(1) so as to set aside the assessment order and direct the initiation of penalty proceedings].

Page 4602: section 263:

Before line 10 from bottom, add,—

“In *Subeer Singh Tamra v CIT* [(1987) 165 ITR 95 (Raj)], it has been

held that when once the matter has been remanded by the Tribunal to the Commissioner, the validity of the proceedings under section 263 can be questioned before him as the entire matter is thrown open before him.

In *CIT v Ruby Trading Co. (P.) Ltd* [(1987) 32 Taxman 500 (Raj)], the Tribunal was directed to refer, *inter alia*, a question whether the Tribunal was justified in cancelling the Commissioner's revisional order under section 263.

CIT's revisional order set aside—effect of.—Where a revisional order passed by the Commissioner under section 263 setting aside the assessment and directing the Income-tax Officer to make a fresh assessment is set aside, on appeal, by the Tribunal, the Income-tax Officer cannot assume jurisdiction to make a fresh assessment in pursuance of the Commissioner's revisional order, till the appellate order passed by the Tribunal is set aside in further proceedings [*Govindram Seksaria Charity Trust v ITO*, (1987) 168 ITR 387 (MP)] or its operation is suspended by a competent court or authority [*CIT v Dhampur Sugar Mills Ltd.*, (1987) 65 CTR (All) 78].”.

Page 4606: section 264:

After line 4 from top, *add*,—

“**Commissioner has power to issue directions.**—If any system where there is a hierarchy of tribunals set up, an appellate or revisional authority should necessarily have the power to give directions to the original authority to deal with the matter in accordance with the judgment of the higher authority. Section 264 is not a provision of law dealing with the question of imposition of liability on the assessee. It is only a part of a machinery section. It cannot be construed in a narrow manner. The Commissioner has the power under section 264 to issue directions to the Income-tax Officer [*Mohammadi Begum v CIT*, (1986) 158 ITR 662, 671 (AP)].”.

Page 4613: section 264:

Before line 4 from bottom, *add*,—

“In the facts of *Ram Narain Singh v State of Bihar* [(1986) 160 ITR 577 (Pat)], a revision application filed after the expiry of the period of limitation was held barred by limitation.”.

Pages 4614-4615: section 264:

On the subject “*Condonation of delay*”, reference may also be made to—

(1) *Delhi Cloth & General Mills Co. Ltd. v CIT*, (1987) 165 ITR 599 (Del) [The pendency of the proceedings under the Excess Profits Tax Act up to the time the appeals were decided by the Tribunal can be considered a sufficient cause which prevented the assessee from making the revision petition earlier].

(2) *Kerala Urban Development Finance Corporation Ltd. v CIT*, (1987) 167 ITR 289 (Ker) [The word ‘sufficient cause’ occurring in the proviso to section 264(3) should receive a liberal construction so as to advance sub-

stantial justice. The discretion vested in the Commissioner is a judicial one to be exercised in accordance with law. The question as to whether there is sufficient cause for not filing the revision petition in time is a pure question of fact].

(3) *Saurashtra Cement and Chemical Industries Ltd. v CIT*, (1987) 168 ITR 231 (Guj) [Negligence to operate as a bar in considering a case for condonation of delay must be such negligence as was related to the diligence in taking appropriate proceedings. In the facts of the instance case, the delay in presenting the revision application was held to be condoned].

Page 4616: section 264:

On the subject "*No limitation for making an order following an application*", reference may be made to *Mohammadi Begum v CIT*, (1986) 158 ITR 662 (AP).

Page 4617: section 264:

After the paragraph titled "*No revision during pendency of appeal before the AAC*", *add*,—

"Pendency of appeal before the AAC for another year is no bar.—The pendency of an appeal for a subsequent year before the Appellate Assistant Commissioner cannot debar the Commissioner from considering a revision application under section 264 for an earlier year. The mere fact that the relief that might be granted by the Commissioner in exercise of his power under section 264 in that behalf for an earlier year could have its consequence upon the proceedings for the subsequent year then pending before the Appellate Assistant Commissioner, could not bring the case within the provisions of section 264(4)(b) [Cf. *Brooke Bond & Co. Ltd. v CIT*, (1986) 162 ITR 373, 382 (SC)]. In that case, the Supreme Court directed the Commissioner to consider the revision application relating to an earlier year even though an appeal was pending before the Appellate Assistant Commissioner on the same point in relation to a subsequent year."

Pages 4618-4619: section 264:

At the end of the paragraphs titled "*Departmental appeal to the Tribunal, whether bars a revision petition?*", *add*,—

"The Bombay High Court, in *R. H. Muttoo v Mrs. Kasturbai Walchand* [(1987) 166 ITR 392 (Bom)], has taken a view to the effect that where a departmental appeal filed before the Tribunal has been dismissed by the Tribunal, it could not be said that the revision petition is barred by the provisions similar to section 264(4)(c)."

Page 4620: section 264:

Before line 4 from bottom, *add*,—

"Order violating principles of natural justice can be corrected.—An order passed by the Income-tax Officer in violation of the principles of natural justice is still an order though liable to be corrected, *inter alia*, in exercise

of revisional power under section 264. Such an order is not void *ab initio* [*Mohammadi Begum v CIT*, (1986) 158 ITR 662 (AP)].”.

Page 4623: section 264:

After serial No. (13), discussing the cases where the rejection or dismissal of revision petition was held not to be proper and the High Court, in its writ jurisdiction, quashed the order with direction to dispose of the revision petition in accordance with law, *add,—*

“(14) *Gulabi Devi v CIT*, (1987) 164 ITR 662 (Punj) [where the Commissioner did not consider the arguments advanced by the assessee].

(15) *Laxmi Traders v CIT*, (1987) 168 ITR 253 (Ori).”.

Page 4624: section 265:

In line 7 of the footnote marked*, after “130 ITR 180 (Bom)”, *add,—* “; *CIT v Bombay Trading Corporation Ltd.*, (1987) 165 ITR 460 (Bom)”.

Pages 4625-4626: section 265:

On the subject “*High Court cannot stay recovery pending reference*”, reference may also be made to *Madho Saran v IAC*, (1987) 163 ITR 673 (All).

Pages 4644-4645: section 269A:

At the end of the paragraphs titled “*Apparent consideration if the transfer is by way of sale*”, *add,—*

“In *Manu Bharati Co-operative Housing Society Ltd. v CIT* [(1986) 162 ITR 693 (Bom)], the purchaser of a tenanted property undertook the liability to provide alternative accommodation to the tenants which worked out at Rs. 2,66,000. It was held that such a liability was a part of the transaction undertaken by the purchaser.”.

Pages 4653-4654: section 269A:

On the subject “*Evidentiary value of valuer's valuation*”, reference may also be made to *Himland Exports (Pr.) Ltd. v ITAT*, (1987) 167 ITR 478 (Del) [holding that the Valuation Officer's valuation report is not conclusive but is only a piece of evidence].

Page 4656: section 269A:

After line 18 from top, *add,—*

“**Fair market value, determination of—relevant or irrelevant considerations.**—Sale transaction in a more important locality of the very city would undoubtedly be relevant and cannot be ignored at all in determining the fair market value of the property for purposes of Chapter XXA of the 1961 Act. On the other hand, the sale of a larger piece of land on the other side of the road though situated in front of the very property with its own special advantages and disadvantages cannot be the sole criteria or basis for determining the fair market value of the property in dispute [*Subbas Malharirao Kachure v IAC*, (1986) 159 ITR 726 (Karn); *IAC x Laxmi-*

chand, (1986) 159 ITR 730 (Karn)]. Similarly, the failure to initiate acquisition proceedings with regard to other properties in the same area is not relevant [*IAC v Laxmichand*, (1986) 159 ITR 730 (Karn)].

The actual cost of construction or admitted cost of construction of a property is not conclusive in the matter of determination of the fair market value of that property [see, *Smt. Sabita Mohan Nagpal v CWT*, (1986) 160 ITR 751, 757 (Raj)].”.

Page 4659-4660: section 269A:

At the end of the paragraphs titled “I. *Land and building method*”, add,—

“In *Dr. Kishore Chand Kapoor v Dharam Pal Kapoor* [AIR 1987 SC 66], which is a case relating to valuation of building for the purposes of partition, it has been laid down that the method of capitalization of the rent actually received or which might reasonably be received from the land or building is not the only method that should be adopted in valuing land and building. In the facts of that case, the valuation of land and building separately by considering the size, situation and utility was held not improper.

In *Smt. Rajshuri v CWT* [(1987) 163 ITR 473 (Del)], the question of law whether the Tribunal was justified in upholding valuation of property by land and building method was directed to be referred by the Tribunal.”.

Page 4661: section 269A:

At the end of the paragraphs titled “IV. *Rental basis or yield basis*”, add,—

“When the valuation is to be determined with reference to the annual rental value, the rent fetched or reasonably expected as on the relevant date is the only relevant matter and not the future rent that it might fetch [Cf. *CWT v Dr. K. Jagadeesan*, (1987) 163 ITR 289, 292 (Mad)].

The proper method for determining the valuation of a property in the occupation of tenants is the rental method [*Smt. Sabita Mohan Nagpal v CWT*, (1986) 160 ITR 751 (Raj)].

Most efficacious method to be followed.—It is for the Competent Authority to decide in a given situation as to which method would be more efficacious to determine the fair market value. The use of the method would thus entirely depend on the particular facts and circumstances of the case. The question of the use of the method which is favourable to the assessee or to the Revenue has no bearing because it is the fair market value which is to be determined and not the price which is favourable either to the assessee or to the Revenue. Consideration of a particular method being favourable to the assessee, therefore, would be wholly irrelevant and the Competent Authority is enjoined by law to adopt only that method which is most efficacious to determine the fair market value of the property sold

[*Sutlej Chit Fund and Financiers (Pr.) Ltd. v CIT*, (1986) 161 ITR 174, 188-189 (Punj)].”.

Page 4661: section 269A:

Before line 6 from bottom, *add*,—

“In *Smt. Manjushree Biswas v CWT* [(1987) 65 CTR (Cal) 68], rule 1BB has also been held to be concerning a procedural matter, having application to all pending assessments.

In *CWT v Gun Nidhi Dalmia* [(1987) 163 ITR 141 (Del)], the Tribunal was directed to refer to the High Court a question of law, viz., whether the Tribunal was justified in holding that rule 1BB framed with effect from 1st April, 1979, applied to prior proceeding pending before the Wealth-tax authorities on that date. Also see, *CWT v Himalaya Trading Co.*, (1987) 168 ITR 596 (Del).”.

Page 4668: section 269A:

At the end of the paragraph titled “*Standard or fair rent to be the basis for adopting annual value method*”, *add*,—

“The test, therefore, is not what is the standard rent of the building but what is the rent which the owner reasonably expects to receive from a hypothetical tenant and such reasonable expectation can in no event exceed the standard rent of the building determinable in accordance with the principles laid down in the Rent Control Act, though it may, in a given case, be lower than such standard rent [*Dr. Balbir Singh v M.C.D.*, (1985) 152 ITR 388, 403 (SC)].

Four categories of properties.—In *Dr. Balbir Singh v M. C. D.* [(1985) 152 ITR 388 (SC)], for the purpose of ascertaining the manner of determination of ‘rateable value’ for making assessment of property tax under the Delhi Municipal Corporation Act, 1957, the Supreme Court has classified the properties into four categories, viz., (1) self-occupied; (2) partly self-occupied and partly tenanted; (3) restrictive leasehold on which construction is raised; and (4) where the property has been constructed in stages. The Supreme Court has laid down principles for determination of each one of the categories.

In *Common Cause Registered Society v Union of India* [AIR 1987 SC 2211], it has been held that the above decision [(1985) 152 ITR 388 (SC)] does not require any clarification.”.

Page 4670: section 269A:

Before line 3 from bottom, *add*,—

“Agreeing with the above view of the Karnataka High Court [(1980) 126 ITR 157 (Karn)], the Andhra Pradesh High Court, in *U. N. V. Pratap v CWT* [(1987) 34 Taxman 406 (AP)], has held that it is not necessary that of the two valuations, the department is always bound to adopt the lower valuation. The only obligation of the department is to arrive at a

valuation which is fair and reasonable. There is no rule that if two valuations are possible, the department is bound to adopt the one which is more favourable to the assessee.”.

Page 4674: section 269A:

After line 17 from top, *add*,—

“Once the rental value of a particular property is accepted at a particular figure, the potential increase in rent that that property might fetch at the expiry of the lease period cannot come into the picture for the purpose of valuing that property as a multiple of the annual rental value [*CWT v Dr. K. Jagadeesan*, (1987) 167 ITR 289 (Mad)].

The question about multiple which should be applied to the annual value of the property for arriving at the fair market value is a pure question of fact [*CWT v M. N. Soi & Sons*, (1986) 51 CTR (Del) 227].

In *Smt. Sabita Mohan Nagpal v CWT* [(1986) 160 ITR 751 (Raj)], the multiple of 14 to the annual rent was adopted.

Valuation, a question of fact.—The question about valuation of a particular property is, ordinarily, a question of fact [*CIT v Shakuntala Rajeshwar*, (1986) 160 ITR 840 (Del); *CWT v Himalaya Trading Co.* (1987) 168 ITR 586 (Del)].”.

Pages 4676-4677: section 269A:

On the subject “*Person interested*”, reference may also be made to *Himalaya Tiles & Marble (P.) Ltd. v Francis Victor Coutinho*, AIR 1980 SC 1118; *Amar Singh Yadav v Shanti Devi*, AIR 1987 Pat 191 (FB) [holding that the expression ‘person interested’ as defined in section 3(b) of the Land Acquisition Act, 1894, as also used in sections 18 and 20 of that Act, should be liberally construed. That expression ‘person interested’ does not require that a person must really have an interest in the land sought to be acquired. It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims an interest in the compensation, he is a person interested within the meaning of the definition of that expression. The mere fact that a person or a party may not have been before the Land Acquisition Officer would not by itself conclusively bar and exclude him from the ambit of being a ‘person interested’].

Page 4689: section 269C:

After line 22 from top, *add*,—

“Dropping of proceedings in certain cases.—In *CIT v Rattan Chand Sood* [(1987) 166 ITR 497 (Del)], the apparent consideration was only a petty amount of Rs. 19,992 and the appeal was pending before the High Court on 1st April, 1986. The High Court observed that, in view of the departmental circular No. 455, dated 16th May, 1986, this was clearly a case in which the proceedings should not be allowed to drag on further. A copy of the judgment was directed to be sent to the Central Board of Direct Taxes so

as to enable them to take necessary action in the matter on the lines indicated in the judgment.

The said departmental circular No. 455, dated 16th May, 1986, reads as under:—

*'Acquisition of immovable properties under Chapter XXA of Income-tax Act, 1961—Guidelines—Regarding.—*The Finance Bill, 1986, (now Act) has proposed (now enacted) that no proceedings shall be initiated under section 269C of the Income-tax Act, 1961, in respect of a property transferred after the 30th day of September, 1986. The Bill (now Act) also proposes (now enacts) to insert Chapter XXC providing for purchase by Central Government of immovable properties in certain cases of transfer.

With a view to achieve early finalisation of proceedings under the existing Chapter XXA of the Income-tax Act, 1961, the Board has decided that with effect from 1st April, 1986, acquisition proceedings under section 269C will not be initiated in respect of an immovable property for which the apparent consideration is Rs. 5 lakhs or less and that where acquisition proceedings have been initiated by issue of notice under section 269D, the proceedings will be dropped if the apparent consideration of the immovable property is below Rs. 5 lakhs.'

On the subject of dropping of the acquisition proceedings in cases where a declaration in that regard has been made under the provisions of the Voluntary Disclosure of Income and Wealth Ordinance, 1975/Act, 1976, has been made and accepted, reference may be made to *B. M. Marappa v IAC*, (1986) 160 ITR 642, 647-648 (Karn).

Page 4691: section 269C:

After line 24 from top, *add*,—

"Reasons need not be communicated.—The communication of the reasons leading to the formation of the requisite belief by the Competent Authority is not required to be made to the person concerned. Nor such non-communication is fatal. In that view of the matter, the legality of the order of the Competent Authority cannot be challenged on the ground that reasons recorded for initiating the acquisition proceedings were not communicated to the appellant [*Sutlej Chit Fund and Financiers (Pr.) Ltd. v CIT*, (1986) 161 ITR 174, 178-179 (Punj)].".

Page 4693: section 269C:

After line 15 from top, *add*,—

"However, the Punjab High Court has, in *Sutlej Chit Fund and Financiers (Pr.) Ltd. v CIT* [(1986) 161 ITR 174 (Punj)], **dissented from** the above view taken by the Calcutta High Court in *Competent Authority v Bani Roy Chowdhury* [(1981) 131 ITR 578 (Cal)] and also by the Gujarat High Court in *CIT v Smt. Vimlaben Bhagwandas Patel* [(1979) 118 ITR 134 (Guj)]. The Punjab High Court has taken the contrary view to the effect that the presumptions about artificial rules of evidence would be available

even at the initial stage of formation of the requisite belief for the initiation of acquisition proceedings.

Still, the Delhi High Court, in *Himland Exports Pr. Ltd. v ITAT* [(1987) 167 ITR 478 (Del)], is of the view that such presumptions are available only at the stage of final determination.”

Page 4699: section 269C:

Before line 12 from bottom, add,—

“In *Himland Exports Pr. Ltd. v ITAT* [(1987) 169 ITR 478 (Del)], the original owner, after having agreed to sell a plot of land to one S for Rs. 12,07,500, sold that plot subsequently to H for Rs. 7,50,000. S filed affidavit regarding breach of agreement and a suit claiming damages. It was held, on facts, that the Competent Authority did not base itself on the presumptions enacted in section 269C(2). It was on the basis of two items of definite and positive information, namely, the two agreements and the affidavit of S, that the Competent Authority arrived at a reasonable belief that the property had been sold for a consideration which had not been truly set out in the sale deed and that this was done with one of the two objects set out in section 269C(1). The conclusion of the Tribunal that the Competent Authority had reason to believe that the conditions set out in section 269C(1) were fulfilled was a conclusion of fact. It was also held that it was a fair inference from facts proved on record that the appellant must have received an amount of consideration larger than that stated in the document. This was a finding of fact and did not give rise to any question of law.”

Page 4710: section 269D:

After line 16 from top, add,—

“In *All India Reporter Ltd. v Competent Authority, IAC* [(1986) 162 ITR 697 (Bom)], the Official Gazette containing notice under section 269D was printed within the statutory period but the same was made available to the public only after the expiry of the statutory period. It was held that the acquisition proceedings were not validly initiated because the notice was not published in the Official Gazette within the statutory period and the same were liable to be quashed. Also see, *Manu Bharati Co-operative Housing Society Ltd. v CIT*, (1986) 162 ITR 693 (Bom).”

Page 4710: section 269D:

In line 21 from top, after “155 ITR 568 (Mad)”, add,—“; *General Fibre Traders v Union of India*, (1987) 61 CTR (Syn) 38 (Cal)” [holding, in the context of a customs notification, that publication in the Official Gazette is sufficient and the availability of the Gazette to the public is not a condition precedent].

Pages 4711-4712: section 269D:

On the subject “Non-service of individual and/or locality notice within

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the period of nine months does not render the proceedings a nullity", reference may also be made to *CIT v Mala Singh*, (1986) 161 ITR 78 (Punj).

Page 4712: section 269D:

On the subject "*Individual notice served prior to Gazette notification*", reference may also be made to—

(1) *B. M. Marappa v IAC*, (1986) 160 ITR 642 (Karn) [Issue of notice to the transferee prior to the publication in the Official Gazette does not affect the jurisdiction of the Competent Authority].

(2) *Satya Narain Prakash Punj v Union of India*, (1986) 160 ITR 693 (Del) [Issue of notice to the transferor and transferee prior to the publication in the Official Gazette does affect the jurisdiction of the Competent Authority and the proceedings were held liable to be quashed].

Page 4725: section 269F:

After line 11 from top, *add*,—

"In the facts of *Manu Bharati Co-operative Housing Society Ltd. v CIT* [(1986) 162 ITR 693 (Bom)], the order of acquisition was quashed.

But, in the facts of *Himland Exports Pr. Ltd. v ITAT* [(1987) 167 ITR 478 (Del)], the order of acquisition was upheld."

Page 4728: section 269G:

At the end of the paragraph titled "*Power to extend time*", *add*,—

"For availing the benefit of extension of period of limitation under the proviso to section 269G(1), the application in that regard must be made before the expiry of the prescribed period of limitation. In this regard the provisions of section 269G(1) are different from those of section 253(5) [*B. Subba Rao v IAC*, (1987) 167 ITR 757 (AP)]."

Page 4730: section 269G:

After the paragraph titled "*Hearing and orders*", *add*,—

"**Consideration of appeal on merits, when possible.**—When an appeal preferred before the Appellate Tribunal is competent one, then only the Tribunal can examine and consider the appeal on merits. When the Tribunal finds that the appeal preferred before it is incompetent appeal, it should refrain from dealing with the merits and expressing any opinion on any of the questions raised therein [*IAC v K. B. Nagarala*, (1986) 162 ITR 170 (Karn)]."

Page 4730: section 269G:

On the subject "*Additional ground*", reference may also be made to *B. M. Marappa v IAC*, (1986) 160 ITR 642 (Karn) [holding that additional ground relating to procedural matters cannot be admitted for the first time by the Tribunal].

Page 4736: section 269H:

At the end of the page, *add*,—

“Thus, ordinarily, it is not open to the High Court to scrutinise the evidence again or to disturb the finding as to the fair market value on merits arrived at by the Tribunal because the appeal to the High Court under section 269H is maintainable only on a question of law. It is not open to the appellant to challenge, before the High Court, the correctness of the fair market value arrived at by the lower authorities on such a ground [*Sutlej Chit Fund and Financiers Pr. Ltd. v CIT*, (1986) 161 ITR 174, 189 (Punj)].”.

Pages 4737-4738: section 269H:

At the end of the paragraph titled “*High Court remanded the matter to the competent authority*”, *add*,—

“In the facts of the following cases, the matter was also remanded to the competent authority:—

(1) *Subbas Malharirao Kachure v IAC*, (1986) 159 ITR 726 (Karn).

(2) *B. M. Marappa v IAC*, (1986) 160 ITR 642 (Karn).”.

Page 4741: section 269-I:

At the beginning of the page, *add*,—

“**Provisions not ultra vires.**—The provisions of section 269-I do not suffer from the vice of excessive delegation and is not violative of Article 14 of the Constitution [*Hiralal Nemchand Shah v Union of India*, (1986) 162 ITR 180, 188 (Karn)].

‘**Vesting**’—**meaning of.**—The word ‘vest’ is a word of variable import. A property may vest in title or may vest in possession or may vest in a limited sense, as indicated in the context [*Fruit & Vegetable Merchants Union v Delhi Improvement Trust*, AIR 1957 SC 344]. In *Municipal Corporation of Hyderabad v P. N. Murthy* [(1987) 167 ITR 204 (SC)], it has been held that the expression ‘vesting’ employed in section 202(1)(c) of the Hyderabad Municipal Corporation Act, 1950, must be construed as vesting both in title as well as in possession. That section exempted the Hyderabad Municipal Corporation from property taxes in respect of lands and building vesting in that Corporation.”.

Page 4741: section 269-I:

On the subject “*Voluntary disclosure made pending High Court appeals—proceedings deemed to have been dropped*”, reference may also be made to *B. M. Marappa v IAC*, (1986) 160 ITR 642, 647-49 (Karn).

Page 4743: section 269-I:

Before line 6 from bottom, *add*,—

“In the context of Chapter XXA, a lease, without an iota of doubt, is

an 'encumbrance' and is liable to be extinguished [*Hiralal Nemchand Shah v Union of India*, (1986) 162 ITR 180 (Karn)].”.

Page 4773: section 269RR:

Before the text of section 269S, *add*,—

“The scope and effect of the newly inserted section 269RR and other allied provisions have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘(xx) *Discontinuance of the provisions relating to acquisition of immovable property.*—38.1 The existing provisions of Chapter XXA envisage acquisition by the Central Government of immovable properties, etc., on payment of the consideration shown in the instrument of transfer and 15 per cent. of the said amount. Before these provisions can be invoked, it has to be proved that the consideration for transfer of an immovable property as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax in respect of any income arising from the transfer or concealing of any income or any moneys or other assets not disclosed by the transferee for the purposes of income-tax or wealth-tax.

38.2 As mentioned in the LTFP (para. 5.29) these provisions have not proved to be effective and have generated a great deal of litigation, etc. Further, it is essential to find ways in which taxpayers could be induced to disclose the true value of their properties. In order to achieve this purpose, the new Chapter XXC conferring on the Central Government a pre-emptive right to purchase an immovable property has been inserted in the Income-tax Act and at the same time by a new section 269RR, it has been provided that the provisions of Chapter XXA of the Income-tax Act shall not apply to or in relation to the transfer of any immovable property made after the 30th day of September, 1986.

38.3 As a consequential measure, section 276AA of the Income-tax Act providing for punishment with rigorous imprisonment up to two years and also for liability to fine for failure to comply without reasonable cause or excuse with the provisions of section 269AB or with any direction issued under sub-section (5) of section 269-I of the Income-tax Act has been omitted with effect from 1-10-1986.’”.

Page 4776: section 269SS:

Before the text of section 269T, *add*,—

“**Notified institutions.**—I. *Notification No. S. O. 3607, dated 18-7-1986 as modified by No. S. O. 3828, dated 28-10-1986 or by No. S. O. 4250, dated 28-10-1986.*—‘In exercise of the powers conferred by clause (e) of proviso to section 269SS of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies, Housing Development Finance Corporation Limited, Bombay, in respect of its Home Savings Plan Scheme,

Loan Linked Deposit Scheme and Certificate of Deposit Scheme, including Cumulative Interest Scheme for the purpose of the said section. The earlier notification dated 18-7-1986, is to this extent modified'. [(1987) 164 ITR (St.) 4; (1987) 164 ITR (St.) 73 and (1987) 165 ITR (St.) 188].”.

Page 4780: section 269T:

Before the text of section 269TT, *add*,—

“Departmental circular.—The following departmental circular is relevant to section 269T:—

‘Provisions of section 269T of the Income-tax Act, 1961—Regarding.—Indian Banks’ Association had sought a clarification as to whether the payment in cash of periodical interest amount alone exceeding Rs. 10,000 would attract the provisions of section 269T of the Income-tax Act. This section provides that no company, co-operative society or firm shall repay any deposit otherwise than by an account payee cheque or account payee bank draft where the amount of deposit or the aggregate of the amount of deposit together with any interest is Rs. 10,000 or more.

2. The matter has been examined in consultation with the Ministry of Law. The Board has been advised that the payment of interest of Rs. 10,000 or more, will have to be made in the manner provided in section 269T of the Income-tax Act, 1961. So far as the repayment of deposit together with any interest is concerned, there is no room for doubt. If the amount of repayment after including the interest is Rs. 10,000 or more, the provisions of section 269T of the Income-tax Act would be attracted. This is because the interest accrued on the deposit and credited to the account periodically or otherwise partakes of the character of a deposit and as such becomes a deposit itself.

3. These instructions may please be brought to the notice of all the officers working under you.’ [Circular No. 479, dated 16th January, 1987.]”.

Page 4784: Chapter XXC:

Before the text of section 269U, *add*,—

“Departmental circular.—The scope and effect of the newly inserted Chapter XXC, containing sections 269U to 269UO, have been elaborated in the following portion of the departmental circular No. 461, dated 9th July, 1986, as under:—

‘(xix) Purchase by Central Government of immovable properties in certain cases of transfer.—37.1 The Finance Act, 1986, has inserted a new Chapter XXC in the Income-tax Act relating to purchase by Central Government of immovable properties in certain cases of transfer. The provisions of this new Chapter shall come into force on such dates as the Central Government may, by notification, appoint† and different dates may

† The appointed date is 1st day of October, 1986 [Notification No. S.O. 480(E), dated 7th August, 1986].

be appointed for different areas. Accordingly, as per the notification being made in this regard, these provisions will come into force with effect from 1st October, 1986, in the metropolitan cities of Bombay, Calcutta, Delhi and Madras.

37.2 It may be clarified that the provisions in this new Chapter do not provide for compulsory acquisition of immovable property but merely enable the Central Government to purchase a property which has already been offered for sale. Since the transferee does not suffer any inconvenience in this process, there is no provision for a solatium.

37.3 As regards the value of property which is to be purchased, under these provisions, it had been announced by the LTFP that "the scope of such a provision may be limited initially to the metropolitan cities and also to properties worth more than Rs. 10 lakhs" (para. 5.30). In the Budget speech 1986-87 also, it has been stated that "to begin with, this provision will apply to properties valued at Rs. 10 lakhs located in metropolitan cities" (para. 5.33). Accordingly, the new section 269UC(1) provides that no transfer of any immovable property of such value exceeding Rs. 5 lakhs as may be *prescribed* shall be effected except after an agreement for transfer is entered into between the transferor and the transferee at least three months before the intended date of transfer. Such agreement shall be reduced in writing in the form of a statement by each of the parties to such transfer in the *prescribed* manner and shall be furnished to the 'appropriate authority' within the prescribed period. To begin with, it is proposed to issue a notification making this provision applicable to metropolitan cities and to transactions of the value of Rs. 10 lakhs and above.

37.4 The cases coming under this Chapter will not involve deprivation of property or any rights therein but will only imply a restriction on the contractual rights of the parties. This restriction is just, fair and reasonable having regard to the object sought to be achieved.

37.5 It is a known fact that proliferation of black money is evident in the transfer of immovable properties. As mentioned in the LTFP (para. 5.30), one way of tackling the problem of tax evasion is to confer on the Government the pre-emptive right to acquire any immovable property undergoing a transfer for consideration above a certain value. The assumption of the powers by the Central Government to purchase immovable properties in certain cases of transfer thus has the object of inducing the transferors and the transferees to declare the full amount of consideration in the agreement for transfer.

37.6 On receipt of the statement by each of the parties to such transfers as are within the purview of section 269UC, the appropriate authority may make an order under section 269UD after *recording the reasons in writing* for the purchase of the immovable property at an amount equal to the amount of apparent consideration. This order has to be made within a

period of two months from the end of the month in which the statement in respect of such immovable property is received by the appropriate authority. It may be mentioned that it would not be all properties beyond a certain value that would be purchased by the Government but the recognised statistical method of random sampling will be applied for identifying the properties which are to be purchased for "the reasons to be recorded in writing".

37.7 The property in respect of which an order is passed under section 269UD(1) shall vest in the Central Government free from all encumbrances. Where an order under section 269UD(1) has been made in respect of an immovable property, being any rights in, or with respect to, any land or building or part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein), which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons, or by way of any agreement or any arrangement of whatsoever nature), such order shall have the effect of vesting such right in the Central Government and place the Central Government in the same position in relation to such right as the person in whom such right would have continued to vest, if such order had not been made. This implies that the rights of the tenant are extinguished when the property so vests in the Central Government. It is implied that while deciding whether a particular property is to be purchased by the Central Government, the appropriate authority may consider the adequacy of apparent consideration in the context of the tenancy rights also. However, a provision for such vesting in the Central Government subject to the rights of tenants would have been open to abuse because immediately before the transfer, a transferor might have entered into a collusive agreement with a tenant in order to defeat the purpose of this provision. This is the main reason for vesting of property in the Central Government, as per these provisions, free from all encumbrances.

37.8 As per section 269UK, no person entering into an agreement for the transfer of immovable property in respect of which a statement has been furnished, shall revoke or alter such an agreement for transfer of such property unless the appropriate authority has not made an order for purchase of the said property by the Central Government under section 269UD and the period specified for making such order has expired or the order of the appropriate authority stands abrogated under the provisions of section 269UH. Any transfer of any immovable property in contravention of these provisions shall be void.

37.9 As per a further condition under section 269UL, a registering officer under the Registration Act, 1908, has been barred from registering any document purporting to transfer any immovable property, exceeding the value prescribed unless the appropriate authority certifies that it has

no objection to such a transfer. Further no person shall do anything or omit to do anything which will have the effect of transfer of any immovable property unless the appropriate authority certifies that it has no objection to such a transfer.

37.10 As per section 269UO, the provisions of this Chapter shall not apply to or in relation to any immovable property where the agreement for transfer of such property is made by a person to his relative on account of natural love and affection, if a recital to that effect is made in the agreement for transfer.

37.11 As per section 269UF where an order for the purchase of any immovable property is made, the Central Government shall pay by way of consideration for the purchase of immovable property, an amount equal to the amount of apparent consideration. The said amount would be tendered to the person or persons entitled thereto within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. If the Central Government fails to tender such amount to the person interested or to deposit the same with the appropriate authority within that specified period, the order to purchase the immovable property by the Central Government shall stand abrogated and the immovable property shall stand revested in the owner of that property after the expiry of the period in question.

37.12 Section 276AB provides that any person who fails to comply with the provisions of section 269UC or fails to surrender or deliver possession of the property under section 269UE(2) or contravenes the provisions of section 269UL(2) shall be punishable with rigorous imprisonment extending up to 2 years and shall also be liable to fine. In the absence of special and adequate reasons to the contrary to be recorded in the judgment, such imprisonment shall not be for a period of less than 6 months.'".

Page 4784: section 269U:

Before the text of section 269UA, *add*,—

"Notifications under section 269U.—I. 'In exercise of the powers conferred by section 269U of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby appoints the 1st day of October, 1986, as the date on which Chapter XXC of the said Act shall come into force in—

- (i) the Union territory of Delhi,
- (ii) the areas comprised in 'Greater Bombay' within the meaning of the Bombay Municipal Corporation Act (Act No. 3 of 1888);
- (iii) the areas comprised in 'Calcutta Metropolitan Area' within the meaning of the West Bengal Town and Country (Planning and Development) Act, 1979 (Act No. 13 of 1979); and

- (iv) the areas comprised in 'Madras Metropolitan Planning Area' within the meaning of the Tamil Nadu Town and Country Planning Act, 1971 (Act No. 35 of 1972).'

[Notification No. S. O. 480(E), dated 7th August, 1986.]

II. 'In exercise of the powers conferred by section 269U of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby appoints the 1st day of October, 1987, as the date on which Chapter XXC of the said Act shall come into force in—

- (i) the areas comprised in the "Bangalore Metropolitan Region" within the meaning of the Bangalore Metropolitan Region Development Authority Act, 1985 (Karnataka Act No. 39 of 1985), and
- (ii) the areas declared by the State Government of Gujarat under section 22 of the Gujarat Town Planning and Urban Development Act, 1976 (Gujarat Act No. 27 of 1976) as "Ahmedabad Urban Development Area" and the areas comprised in the city of Ahmedabad constituted under section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (Bombay Act No. LIX of 1949) as applicable to the State of Gujarat.'

[Notification No. S. O. 835(E), dated 21st September, 1987.]

Page 4787: section 269UA:

At the end of the text of section 269UA *add*,—

"Relevant rule.—Rule 48-I of the Income-tax Rules, 1962 [which has been reproduced at page xxxv of Vol. 6] is relevant to section 269UA."

Page 4790: section 269UB:

Before the text of section 269UC, *add*,—

"Relevant rule.—Rule 48-J of the Income-tax Rules, 1962 [which has been reproduced at pages xxxv-xxxvi of Vol. 6] is relevant to section 269UB.

Notification under section 269UB.—In exercise of the powers conferred by sub-sections (1) and (2) of section 269UB of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby constitutes the appropriate authorities specified in column (1) of the Table below, each consisting of three persons mentioned in the corresponding entries in column (2) of the said Table, to perform the functions of the appropriate authorities under Chapter XXC of the said Act, within the local limits specified in the corresponding entries in column (3) of the said Table.

Table

| <i>Appropriate authority</i> | <i>Name and Designation of the members of the Appropriate Authority</i> | <i>Local limits</i> |
|------------------------------------|---|--|
| (1) | (2) | (3) |
| 1. Appropriate Authority, Delhi. | (i) Shri K. R. Gupta, Commissioner of Income-tax. (ii) Shri A. P. Saxena, Commissioner of Income-tax. (iii) Shri T. S. Ratnam, Chief Engineer. | The Union territory of Delhi. |
| 2. Appropriate Authority, Bombay. | (i) Shri P. G. Gandhi, Commissioner of Income-tax. (ii) Shri S. S. R. Inamdar, Commissioner of Income-tax. (iii) Shri O. D. Mohindra, Chief Engineer. | The areas comprised in 'Greater Bombay' within the meaning of the Bombay Municipal Corporation Act (Act No. 3 of 1888). The areas declared by the State Government of Gujarat under section 22 of the Gujarat Town Planning and Urban Development Act, 1976 (Gujarat Act No. 27 of 1976) as "Ahmedabad Urban Development Area" and the areas comprised in the city of Ahmedabad constituted under section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (Bombay Act No. LIX of 1949) as applicable to the State of Gujarat. |
| 3. Appropriate Authority, Calcutta | (i) Smt. L. Ramasubramanyam, Commissioner of Income-tax. (ii) Shri S. Kanan, Commissioner of Income-tax. (iii) Shri S. C. Gupta, Chief Engineer. | The areas comprised in 'Calcutta Metropolitan Area' within the meaning of the West Bengal Town and Country (Planning and Development) Act, 1979 (Act No. 13 of 1979). |

| (1) | (2) | (3) |
|-----------------------------------|---|---|
| 4. Appropriate Authority, Madras. | (i) Shri N. R. Sivaswamy, Commissioner of Income-tax. (ii) Shri K. Subramanian, Commissioner of Income-tax. (iii) Shri Chandra Pal, Chief Engineer. | The areas comprised in 'Madras Metropolitan Planning Area' within the meaning of the Tamil Nadu Town and Country Planning Act, 1971 (Act No. 35 of 1972). The areas comprised in the "Bangalore Metropolitan Region" within the meaning of the Bangalore Metropolitan Region Development Authority Act, 1985 (Karnataka Act No. 39 of 1985). |

2. This notification shall come into force on the 1st day of October, 1986. [Notification No. S. O. 684(E), dated 24-9-1986: (1986) 162 ITR (St.) 59-60, as amended by No. S. O. 25(E), dated 21-1-1987: (1987) 165 ITR (St.) 226; by No. S. O. 240(E), dated 27-3-1987: (1987) 166 ITR (St.) 151-152 and also by No. S. O. 836(E), dated 21-9-1987].

Page 4791: section 269UC:

At the beginning of the page, *add*,—

"Relevant rules and form.—Rules 48K and 48L of the Income-tax Rules, 1962 [which have been reproduced at page xxxvi of Vol. 6] and Form No. 37-I appended to those Rules [which has been reproduced at pages xl to xliii of Vol. 6] are relevant to section 269UC. It may be noted that rule 48L has, subsequently, been amended by the Income-tax (Seventh Amendment) Rules, 1987."

Page 4794: section 269UD:

After line 2 from top, *add*,—

"Proceedings under Chapter XXC challenged.—In *Smt. Swarna B. Kapur v A. C. Panchdhari: Kishor Tulsidas Choksi v A. C. Panchadhari* [(1987) 167 ITR 200 (Bom)], the proceedings taken by the appropriate authority have been challenged in two writ petitions. Rule was issued and stay of proceedings was granted subject to fulfilment of certain conditions mentioned in the order."

Page 4804: section 270:

After the paragraph titled "1922 Act", *add*,—

"Legislative amendment.—Section 270 has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), by omitting the words 'without reasonable excuse' from that section, with

effect from 10-9-1986. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages. 6698-6699, *post.*”.

Page 4833: section 271:

Before line 8 from bottom, *add*,—

“III. The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.—By this Act, section 271(1)(a) and section 271(1)(b) as also *Explanation 1* and *Explanation 5* to section 271(1) have been amended, with effect from 10th September, 1986.

The scope and effect of the amendments made in section 271, as also made in sections 221, 270, 271A, 271B, 272A, 272AA, 272B, 273, 276A, 276AB, 276B, 276DD and 276E and also of newly inserted sections 273B, 278AA and 278E have been elaborated in the following portion of the departmental circular No. 469, dated 23rd September, 1986, as under:—

‘(ix) Amendments to provisions relating to penalties and prosecutions for shifting the burden of proof.—**12.1** Chapter XXI of the Income-tax Act contains provisions relating to penalties imposable for various defaults under the Act. Chapter XXII of the Income-tax Act contains provisions relating to offences and prosecutions under the Act. One of the reasons for the unsatisfactory performance of the Income-tax Department in the matter of successfully levying penalty and of prosecuting the defaulters is that invariably appellate authorities and the courts have cast upon the Department the near impossible burden of proving the existence of a culpable state of mind on the part of the defaulters.

12.2 On a consideration of the relevant factors in this regard, it was announced by the Long Term Fiscal Policy [para. 5.31(ii)] that in order to effectively tackle the problem of tax evasion, the Income-tax Department will implement a strategy consisting, *inter alia*, of removing weaknesses in the law which hinder effective prosecution of tax evaders and that it was intended to incorporate certain provisions in the direct tax laws similar to those which already exist in the Customs Act and the Gold (Control) Act. For example, under section 123(1) of the Customs Act, 1962, when any gold, diamonds or any other class of specified goods are seized in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized and any person claiming to be the owner of such seized goods. Similarly, under section 98B of the Gold (Control) Act, 1968, in any prosecution for an offence under that Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be open to the accused to prove the fact that he had no such mental state with respect to the offence. Accordingly, the intention of the Government was announced by the LTFP to amend the direct tax laws also to provide similar provisions so that once

evasion is proved, the intention to evade need not be proved by the Department.

12.3 Apart from the above, in the context of the existing scheme of accepting returns with incomes up to Rs. 1 lakh without scrutiny, which is based on trust, it is only logical that the burden should be cast on the assessee to prove his innocence if he has concealed the particulars of his income or to prove the existence of reasonable cause if he has committed any other default under the direct tax laws.

12.4 The salient features of the amendments made to the provisions relating to penalty are as under:

(a) Under section 221 of the Income-tax Act, penalty is payable when an assessee is in default or is deemed to be in default in making the payment of tax. However, no penalty is to be levied, as per the second proviso to section 221(1) if the Income-tax Officer is satisfied that the default was for good and sufficient reasons. This proviso has been substituted to secure that the burden of proving the existence of reasonable cause for default, to the satisfaction of the Income-tax Officer, is cast specifically on the assessee.

(b) Under the existing provisions, penalty is leviable under section 270 for failure to furnish information regarding securities, under section 271(1) (a) for delay in filing return of income without reasonable cause, under section 271(1)(b) for non-compliance of notice under section 143(2) or 142(1) or 142(2A), under section 271A for failure to maintain books of account, under section 271B for failure to get accounts audited, under section 272A(2) for failure to answer queries, under section 272AA for failure to comply with the provisions of section 133B, under section 272B for non-compliance with the provisions of section 139A, under section 273(1)(b) for failure to furnish a statement of advance tax, under section 273(2)(b) for failure to furnish estimate of advance tax and under section 273(2)(c) of the Income-tax Act for failure to furnish higher estimate of advance tax. Penalty is leviable under these provisions if the above defaults are committed without reasonable cause (or excuse under section 270). By omitting the words "without reasonable cause" from these provisions ("without reasonable excuse" from section 270), it has been provided that the default by itself will attract penalty. At the same time, it has been provided by a new section 273B, inserted by the Amending Act, that notwithstanding anything contained in the provisions of section 270, clause (a) or clause (b) of sub-section (1) of section 271, section 271A, section 271B, sub-section (2) of section 272A, sub-section (1) of section 272AA, sub-section (1) of section 272B or clause (b) of sub-section (1), or clauses (b) and (c) of sub-section (2), of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure. By this amendment, the onus of proving the existence of reasonable cause for the defaults referred to in these provisions has been cast on the taxpayer. In this context, reference may be

made to section 123(1) of the Customs Act, 1962, as discussed in para. 12.2 above.

(c)(A) Section 271(1)(c) of the Income-tax Act provides that penalty shall be leviable in the case of an assessee who has concealed the particulars of his income or furnished inaccurate particulars thereof. In a series of decisions beginning with the judgment in 1970, in the case of *CIT v Anwar Ali* [(1970) 76 ITR 696], based on the law as it stood prior to 1-4-1964, the Supreme Court laid down the following basic principles for levying penalty under these provisions:

- (i) an order imposing a penalty is the result of *quasi*-criminal proceedings and the burden lay with the Income-tax Department to establish that the disputed amount represented his income; and
- (ii) the Department has to prove that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars thereof.

The inadequacy of the *Explanation* added by the Finance Act, 1964, led to the substitution by the Taxation Laws (Amendment) Act, 1975, of four *Explanations*. The existing *Explanation* 1 to section 271(1) provides for the situation where no explanation for the failure is offered by the assessee or where the explanation that has been offered is found to be false or where the assessee is not able to substantiate the explanation offered by him. In all these cases, the amount added or disallowed in computing the total income of such person shall be deemed to represent the income in respect of which particulars have been concealed. As per the proviso to this *Explanation*, the onus to establish that the explanation offered was *bona fide* and all facts relating to the same and material to the computation of his income have been disclosed by him will be on the person charged for concealment. However, the fact that the explanation offered was not substantiated will have to be established by the Income-tax Department. Further, under the existing provisions, mere failure on the part of the assessee to substantiate his explanation is not enough to warrant penalty if such explanation is *bona fide* and all facts relating to the same are disclosed by him. The Amending Act in clause (B) of this *Explanation* has substituted for the words "not able to substantiate", the words "not able to substantiate and fails to prove that such explanation is *bona fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him". Further, the proviso making the existing *Explanation* inapplicable to a case where in respect of any amount added or disallowed as a result of the rejection of any explanation offered by such person if the explanation is *bona fide* and all the facts relating to the same and material to the computation of his total income have been disclosed by him, has been cast on the person who has committed the default.

(c)(B) As per the existing *Explanation* 5 to section 271(1) of the Income-tax Act, if at the time of search, assets which are not recorded in

the books of account are found, a taxpayer is liable to penalty for concealment even if he declares the full value of those assets as his income in the return filed after the search. This provision has been found to operate even in cases where the assessee has no intention to fabricate any evidence and he includes in his return the income out of which such assets have been acquired. Hence, by the Amending Act, it has been provided that if an assessee in such cases makes a statement during the course of the search admitting that the assets found at his premises or under his control have been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time prescribed in clause (a) or (b) of section 139(1) and specifies in the statement the manner in which such income has been derived and pays the taxes that are due thereon, no penalty shall be leviable.

(d) Under the existing provisions, prosecution has been provided under section 276A(i) for non-compliance with the provisions of section 178(1), under section 276(ii) and (iii) for non-compliance with the provisions of section 178(3), under section 276AA for non-compliance of the provisions of section 269AB or 269-I, under section 276AB for non-compliance with the provisions of sections 269UC, 269UE(2) and 269UL(2), under section 276B for failure to deduct or pay tax as per Chapter XVIIB, etc., under section 276DD for non-compliance with the provisions of section 269SS, and under section 276E for non-compliance with the provisions of section 269-T if the failure is without reasonable cause or excuse. From the above provisions, the words "without reasonable cause or excuse" have been omitted. This will mean that committing of the *actus reus*† of the particular offence by itself will attract prosecution. At the same time, by inserting a new section 278AA, the Amending Act has provided that notwithstanding anything contained in the provisions of section 276A, 276AA, 276AB, 276B, 276DD or 276E, no person shall be punishable for any failure referred to in these provisions if he proves that there was reasonable cause for such failure. By this amendment, it has been secured that the assessee has to prove the existence of a reasonable cause for the failure as specified above.

(e) By inserting a new section 278E, it has been provided that in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The *Explanation* provides that "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact. Further, that a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

† It means 'wrongful deed'.

By this amendment, a court has to presume the existence of a criminal mental state on the part of the accused in any prosecution requiring such a mental state. However, this presumption can be rebutted by the accused to prove that there was no intention, motive or knowledge of a fact or belief in or reason to believe a fact in respect of the act charged as an offence in that prosecution. As regards the degree of proving the absence of a culpable mental state, it has been provided that a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability. This provision is based on the provisions contained in several other enactments dealing with economic offences such as section 138A of the Customs Act, 1962, section 9C of the Central Excises and Salt Act, 1944, section 98B of the Gold (Control) Act, 1968, and section 59 of the Foreign Exchange Regulation Act, 1973.

12.5 The above provisions will come into effect immediately and will accordingly apply in respect of all defaults or offences committed hereafter.'".

Page 4836: section 271:

On the subject "*Satisfaction, and not issue or service of notice, in the course of the proceedings necessary*", reference may also be made to *CIT v Dewan Kunj Lal Kanhaiya Lal*, (1987) 164 ITR 284 (Pat).

Page 4843: section 271:

After line 4 from top, *add,—*

"Penalty and prosecution—distinction.—There is a marked distinction between prosecution for an offence punishable under the Act and proceedings to impose penalties under Chapter XXI. Penalty proceedings are not criminal proceedings in the strict sense. In a criminal charge, unless the prosecution proves‡ beyond reasonable doubt the offence committed by the assessee under the Act, the delinquent is entitled to the benefit of doubt and thereby goes scot free. The acquittal is on the technical rule of presumed innocence. The standard of proof for imposition of penalty is not as rigorous as that for prosecution of an offence. The test in the case of penalty is totality of circumstances. Evidence may be oral, documentary or circumstantial [*Thakur V. Hari Prasad v CIT*, (1987) 167 ITR 603, 610-11 (AP)]."

Page 4843: section 271:

At the end of the paragraphs titled "*Who can initiate proceedings and impose penalty under section 271?*", *add,—*

"Where the proceedings are before an appellate authority, the Income-tax Officer is not empowered to impose penalty [see, *CIT v Ananda Bazar Patrika (Pr.) Ltd.*, (1987) 167 ITR 268 (Cal)]."

‡ With effect from 10th September, 1986, the provisions of section 278E are pertinent on the point which lays down a presumption as to culpable mental state.

Pages 4843-4844: section 271:

On the subject "*Discretion, when steps in section 271(1) and how to be exercised*", reference may also be made to *CIT v Bengal Iron Galvanizing Works*, (1987) 165 ITR 249 (Cal).

Page 4844: section 271:

On the subject "*Minimum and maximum limits*", reference may also be made to *Bhoomareddy Bros. v CIT*, (1987) 163 ITR 854 (Karn).

Pages 4849-4850: section 271:

On the subject "*Article 20 of the Constitution has no application to penalties imposable by departmental authorities*", reference may also be made to *CIT v Amatul Kareem*, (1987) 167 ITR 703 (AP) [holding that section 18(1)(a) of the Wealth-tax Act, 1957, which is in the nature of a civil liability, is not violative of Article 20(1) of the Constitution which contemplates proceedings in the nature of criminal proceedings].

Pages 4853-4854: section 271(1)(a):

On the subject "*Non-submission or delayed submission of return is a continuing default*", reference may also be made to *CWT v Amolak Singh Jain*, (1987) 163 ITR 825 (Del); *CWT v Inder Sain Jain & Satyapal Jain*, (1987) 163 ITR 831 (Del); *CWT v Amatul Kareem*, (1987) 167 ITR 703 (AP); *CWT v Dalip Kumar Worah*, (1987) 167 ITR 811 (Pat—FB); *H. P. Agarwalla & Sons v CIT*, (1987) 167 ITR 822 (Pat); *CIT v Sri Mohan Lal Agrawala*, (1987) 167 ITR 825 (Pat); *CWT v S. N. Tawaria*, (1987) 63 CTR (Bom) 64.

Page 4854: section 271(1)(a):

After serial No. 7, listing the cases which are no more good law in view of the Supreme Court decision in *Maya Rani Punj* case [(1986) 157 ITR 330 (SC)], *add,—*

“8. *Prithvi Singh v CWT*, (1984) 148 ITR 516 (Raj)."

9. *Jayendra Singh v CIT*, (1986) 160 ITR 866 (Raj)."

Pages 4859-4865: section 271(1)(a):

At the end of the paragraphs titled "*Mens rea, whether ingredient of section 271(1)(a)?*", *add,—*

"In *CIT v Purkha Ram* [(1986) 56 CTR (Raj) 264], the Division Bench required that the matter about the burden of proof of reasonable cause to be referred to a Full Bench.

It may be noted that as a result of the amendment of section 271(1)(a) and insertion of a new section 273B by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, the onus of proving the existence of reasonable cause for default under section 271(1)(a) has specifically been cast on the

assessee. Thus, for defaults committed on or after 10th September, 1986, the question of *mens rea* is not at all relevant.”.

Pages 4866-4867: section 271(1)(a):

At the end of the paragraphs titled “*Reasonable cause or not—determination of*”, *add*,—

“Where the appeal is decided by the appellate authority on a point other than existence of a reasonable cause and the appellate order is set aside by the higher forum, it is open to the assessee to raise the contention that there was a reasonable cause for not filing the return within the prescribed time when the matter comes back to that appellate authority [*CWT v Amatul Kareem*, (1987) 167 ITR 703 (AP)].

In *CIT v S. P. Viz Construction Co.* [(1987) 165 ITR 732 (Pat)], it has been held that an application for extension of time for filing the return received after the expiry of the statutorily prescribed period cannot be taken into account in deciding the question of reasonableness of delay in filing the return. With respect, it is submitted that this view requires reconsideration.”.

Pages 4867-4868: section 271(1)(a):

On the question “*Reasonable cause, a question of fact*”, reference may also be made to *CIT v New Friends & Co.*, (1986) 160 ITR 470 (Raj); *CWT v Rajmata Smt. Geeta Kumari*, (1987) 163 ITR 570 (Raj); *Ashok Kumar Jain v CWT*, (1987) 164 ITR 522 (Pat); *CIT v Kanhayalal Mukundlal*, (1987) 166 ITR 274 (Cal); *CIT v Ramanlal Kamdar*, (1987) 61 CTR (Mad) 13.

Page 4869: section 271(1)(a):

At the end of serial No. (12), discussing the cases where it was held that there was a reasonable cause for delay in furnishing or non-furnishing of the return, *add*,—

“(13) *CIT v Kanhayalal Mukundlal*, (1987) 166 ITR 274 (Cal).”.

Page 4869: section 271(1)(a):

In the last line of the paragraph titled “*Interest and penalty both possible*”, after “150 ITR 671 (Bom)”, *add*,—“; *Jamunadas Mannalal v CIT*, (1987) 164 ITR 66 (Pat); *Pearl Construction Co. v CIT*, (1986) 56 CTR (Pat) 119”.

Page 4870: section 271(1)(a):

In lines 12-13 from top, after “158 ITR 520 (Guj)”, *add*,—“; *Dooars Transport v CIT*, (1986) 162 ITR 383 (Cal)” [holding that the charging of interest for late filing of return raises a presumption of extension of time and, therefore, penalty cannot be levied].

Page 4871: section 271(1)(a):

At the end of the paragraphs titled "*Quantum of penalty*", add,—

"In the facts of *CIT v Ramanlal Kamdar* [(1987) 61 CTR (Mad) 13], the Tribunal was held justified in reducing the quantum of penalty as it was found that there existed a reasonable cause for a part of the delay in filing the return."

Page 4877: section 271(1)(a):

In line 10 from top, after "(1982) Taxation 66(3)-243 (MP)", add,—
"; *CWT v Sham Ice Oil & General Mills*, (1984) 17 Taxman 329 (Punj); *Kanhiyalal v CIT*, (1985) 22 Taxman 66 (Raj); *Prithvi Singh v CWT*, (1984) 148 ITR 516 (Raj); *CWT v Zaverbhai Bapuji*, (1985) 151 ITR 167 (Guj); *CWT v Saraswati Devi*, (1985) 151 ITR 300 (Pat); *Manohar Lal Nagpal v CWT*, (1985) 151 ITR 558 (Punj); *CWT v Jagarnath Singh*, (1985) 153 ITR 589 (Pat); *CWT v Maharaja Shri Devi Singhji of Jodhpur*, (1985) 155 ITR 333 (Raj); *Ram Swaroop v CWT*, (1985) 156 ITR 677 (All); *Jayendra Singh v CIT*, (1986) 160 ITR 866 (Raj); *CWT v Ramdeo Sachdeo*, (1987) 163 ITR 873 (Pat); *Ram Singh v CWT*, (1987) 62 CTR (Pat) 173" [In case of penalty under section 18(1)(i), the crucial date was the one on which the default first occurred, i.e., the date when the return fell due under the provisions of law. The law as regards quantum, ordinarily, was held to be the one that stood in force on such date].

Page 4877: section 271(1)(a):

After line 19 from top, add,—

"After following the decision of the Supreme Court in *Maya Rani Punj v CIT* [(1986) 157 ITR 330 (SC)], one view is that the law applicable is that which was prevailing on the date on which the vulnerable wealth-tax return was filed [*CWT v Amolak Singh Jain*, (1987) 163 ITR 825 (Del); *CWT v Inder Sain Jain and Satyapal Jain*, (1987) 163 ITR 831 (Del)].

The other view is that the penalty is to be levied in accordance with the law in force when the relevant wealth-tax assessment was completed and the Wealth-tax Officer decided to initiate proceedings for imposition of penalty [*CWT v Krishna Bazaz*, (1987) 166 ITR 620 (Cal); *CWT v Amatul Kareem*, (1987) 167 ITR 703 (AP); *CWT v Dalip Kumar Worah*, (1987) 167 ITR 811 (Pat—FB), **overruling**, *CIT/CWT v Jagjit Kaur*, (1986) 162 ITR 844 (Pat); *H. P. Agarwalla & Sons v CIT*, (1987) 167 ITR 822 (Pat); *CIT v Sri Mohan Lal Agarwala*, (1987) 167 ITR 825 (Pat)].

Yet, another view is that where the period of default is covered by the unamended provisions as also by the amended provisions, the penalty is imposable upon the assessee under the unamended provisions for the period of default till the date of amendment and under the amended provisions for the period of default after the amendment [*CWT v S. N. Tawaria*, (1987) 63 CTR (Bom) 64]."

Page 4879: section 271(1)(a):

After line 15 from top, *add*,—

“No cancellation possible for mistake in calculation.—It may be that a penalty order under section 271(1)(a) is challenged on the ground that the calculation of the period of delay was incorrect. In such a case, the mistake in calculation of the period of delay is insufficient to set aside the entire penalty. The appellate authority can correct the mistake and calculate the amount of penalty leviable accordingly. If, in such a case, the assessee also contends that there was a sufficient cause for delay in filing the return, the appellate authority must first consider and decide the question of existence of the reasonable cause [*CIT v Basna Vikas Khand Sahakari Vipanani Sanstha Maryadit*, (1987) 166 ITR 46 (MP)].”.

Page 4885: section 271(1)(c):

At the end of line 8 from top, *add*,—“Similarly, in *Addl. CIT v Kejriwal Iron Stores* [(1987) Taxation 85(3)-151 (Raj)], it has been held that the basis of satisfaction of the Income-tax Officer for initiating penalty proceedings cannot, subsequently, be altered by the Inspecting Assistant Commissioner so as to make a new ground for imposition of the penalty.”.

Pages 4888-4889: section 271(1)(c):

On the subject “*Whether penalty possible for omission to disclose wife’s or son’s income taggable under section 64*”, reference may also be made to *CIT v Jai Ram Prasad*, (1987) 165 ITR 443 (Pat).

Page 4889: section 271(1)(c):

In the last line, after “22 ITR 339 (Nag)”, *add*,—“; *Badri Prasad Om Prakash v CIT* [(1987) 163 ITR 440 (Raj)]” [holding that the subsequent filing of a revised return after queries from the authority concerned cannot escape liability for penalty].

Page 4890: section 271(1)(c):

In lines 11 and 10 from bottom, after “154 ITR 509, 531 (Del)”, *add*,—“; *CIT v Dr. Ku. M. Dubey*, (1987) Taxation 87(3)-81 (MP)” [holding that revised return filed voluntarily without detection would go to mitigate the default of concealment].

Pages 4895-4898: section 271(1)(c):

At the end of the paragraphs titled “*Concealment—ordinarily a question of fact*”, *add*,—

“These were also held to be questions of fact:—

(1) Whether there was concealment or not is, ordinarily, a question of fact [*Sir Shadi Lal Sugar & General Mills Ltd. v CIT*, (1987) 33 Taxman 460A (SC); *Mooiji Jaimal v CIT*, (1986) 160 ITR 475 (MP); *CIT v M. George & Bros.*, (1986) 160 ITR 511 (Ker); *CWT v Akshay Kumar Sanghi*, (1987) 163 ITR 43 (Raj); *Badri Prasad Om Prakash v CIT*,

(1987) 163 ITR 440 (Raj); *CIT v Hazari Mal Milap Chand Surana*, (1987) 163 ITR 531 (Raj); *CIT v Smt. Chandradevi*, (1987) 163 ITR 548 (MP); *CIT v Raj Textiles*, (1987) 166 ITR 632 (MP); *CIT v Chaturbhuj Banwarilal*, (1987) 166 ITR 659 (Raj); *Thakur V. Hariprasad v CIT*, (1987) 63 CTR (AP) 255; *Narayan Hosiery Pr. Ltd. v CIT*, (1987) Taxation 86(3)-7 (Bom); *CIT v Pawan Kumar Dalmia*, (1987) 168 ITR 1 (Ker)].

(2) Where the fact-finding body, bearing in mind the correct principles, comes to the conclusion that the assessee has discharged the onus, it becomes a conclusion of fact [*CIT v Mussadilal Ram Bharose*, (1987) 165 ITR 14, 23 (SC)].

(3) Whether the burden of proof in a given case has been discharged [*CIT v Pawan Kumar Dalmia*, (1987) 168 ITR 1 (Ker); *Mooiji Jatmal v CIT*, (1986) 160 ITR 475 (MP); *CIT v Saraf Trading Corporation*, (1987) 167 ITR 909 (Ker)].

(4) Whether the presumption under the *Explanation* to section 271(1)(c) has been rebutted [*CIT v Pawan Kumar Dalmia*, (1987) 168 ITR 1 (Ker); *CIT v Saraf Trading Co.*, (1987) 167 ITR 909 (Ker)].

(5) Finding as to date of concealment [*CIT v Manilal Tribhuwandas*, (1986) 26 Taxman 143 (MP)].

These were also held to be questions of law:—

(1) Whether the Tribunal was right in law in holding that where a case falls under the *Explanation* to section 271(1)(c), only the minimum penalty is leviable under section 271(1)(iii) [*CIT v Punjab Kesari Hosiery Factory*, (1987) 163 ITR 330 (Punj)].

(2) Whether the Tribunal was justified in holding that the main section 271(1)(c) and the *Explanation* thereto were mutually exclusive [*CIT v Punjab Kesari Hosiery Factory*, (1987) 163 ITR 330 (Punj)].

(3) Whether the Tribunal's order cancelling the penalty levied under section 271(1)(c) was vitiated on account of the Tribunal's failure to fully consider and appreciate the relevant facts [*CIT v Madan Gopal Bansal & Sons*, (1987) 163 ITR 712 (All)].

(4) Whether the *Explanation* was attracted and the penalty was properly levied [*Bombay Motors v CIT*, (1987) 165 ITR 523 (Raj)].

(5) Whether the failure on the part of the assessee to substantiate the claim of deductions would amount to concealment of the particulars of his income [*Narendra Kumar Rajendra Kumar Jain v CIT*, (1987) 167 ITR 488 (MP)].

(6) Whether the Tribunal was justified in cancelling the penalty [*CIT v S. Sohan Singh*, (1987) 61 CTR (Del) 153]. Also see, *CIT v Lall's Gems & Jewels*, (1987) 64 CTR (Raj) 278.

This was also held to be a mixed question of law and fact:—

(1) Whether the penalty for concealment would be exigible or not [*Bhag Mal Charanji Lal v CIT*, (1987) 163 ITR 354 (Punj)].".

Page 4898: section 271(1)(c):

Paragraph titled "*Strict proof necessary in respect of each year*": The decision in *CIT v Sir Shadilal Sugar & General Mills Ltd* [(1972) 86 ITR 776 (All)] has been reversed in *Sir Shadilal Sugar & General Mills Ltd. v CIT* [(1987) 168 ITR 705 (SC)].

Page 4900: section 271(1)(c):

In line 19 from top, after "117 ITR 138 (J&K)", add,—"; *CIT v Bengal Iron Galvanising Works*, (1987) 165 ITR 249 (Cal); *CIT v Tarachand Ghanashyamdas*, (1987) 165 ITR 655 (Cal); *CIT v Bharat Umbrella Mfg. Co.*, (1987) 167 ITR 683 (AP)" [holding that onus to prove concealment lies on the department].

Page 4901: section 271(1)(c):

In line 17 from top, after "135 ITR 797 (Cal)", add,—"; *CIT v Tarachand Ghanashyamdas*, (1987) 165 ITR 655 (Cal); *CIT v Bharat Umbrella Mfg. Co.*, (1987) 167 ITR 683 (AP); *CIT v Saraf Trading Corporation*, (1987) 167 ITR 909 (Ker); *CIT v Pawan Kumar Dalmia*, (1987) 168 ITR 1 (Ker)" [holding that findings in assessment proceedings are relevant, but not conclusive, in penalty proceedings].

Page 4907: section 271(1)(c):

After serial No. 30, discussing cases where, on facts, penalty under section 28(1)(c) of the 1922 Act or under section 271(1)(c) (upto assessment year 1963-64) held leviable, add,—

- "31. *CIT v Standard Mercantile Co.*, (1987) 166 ITR 39 (Pat) [additions made where the assessee admitted clandestine business].
32. *CIT v M. N. Chatterjee*, (1987) 64 CTR (Pat) 314 [there was no explanation worth the name why the assessee showed a figure of sale before the income-tax authority lower than what he had stated before the sales tax authority].
33. *R. B. Shreeram Durgaprasad & Fatechand Narsinghdas v CIT*, (1987) 168 ITR 619 (Bom) [where the inference of conscious concealment was not based merely upon the falsity of the assessee's explanation, but on positive material to indicate that the whole scheme was to disguise the profits]."

Page 4909: section 271(1)(c):

After serial No. 33, discussing the cases where, on facts, penalty under section 28(1)(c) of the 1922 Act or under section 271(1)(c) (upto assessment year 1963-64) held not leviable, add,—

- "34. *CIT v Bengal Iron Galvanising Works*, (1987) 165 ITR 249 (Cal) [assessee made a full disclosure before assessment].

35. *CIT v Tarachand Ghanashyamdas*, (1987) 165 ITR 655 (Cal) [apart from falsity of the assessee's explanation, there was no other material].
36. *Prahlad Maliram v CIT*, (1987) 166 ITR 149 (Raj) [there was no evidence of concealment of income].
37. *Jainarayan Babulal v CIT*, (1987) Tax LR 1109 (Bom) [assessment of undisclosed income, relating to financial year 1948-49, for 1950-51 assessment year held not proper and no penalty held leviable for 1950-51].

Pages 4909-4911: section 271(1)(c):

On the subject "*Assessee's agreement or surrender, whether sufficient for imposition of penalty?*", reference may also be made to—

(1) *Sir Shadilal Sugar & General Mills Ltd. v CIT*, (1987) 168 ITR 705 (SC), reversing, *CIT v Sir Shadilal Sugar & General Mills Ltd.*, (1972) 86 ITR 776 (All), referred to in lines 24-25 from top of page 4910 [From agreeing to additions, it does not follow that the amount agreed to be added was concealed income]. Also see, *CIT v Punjab Tyres*, (1986) 162 ITR 517 (MP); *CIT v Haji Gaffar Haji Dada Chini*, (1987) 34 Taxman 167 (Bom).

(2) *CIT v M. George & Bros.*, (1986) 160 ITR 511, 516 (Ker) [Where the assessee for one reason or the other agrees or surrenders certain amounts for assessment, the imposition of penalty solely on the basis of the assessee's surrender will not be well-founded].

Pages 4911-4912: section 271(1)(c):

At the end of the paragraphs titled "*Effects of the 1964-amendments to section 271(1)*", add,—

"Under the law as it stood prior to the amendment of section 271 by the Finance Act, 1964, the onus was on the Revenue to prove that the assessee had furnished inaccurate particulars or had concealed the income. Difficulties were found in proving the positive element required for concealment under the law prior to the amendment and this had to be established by the Revenue. To obviate that difficulty, the *Explanation* was added. The effect of the *Explanation* was that where the total income returned by any person was less than 80% of the total income assessed, the onus was on such person to prove that the failure to file the correct income did not arise from any fraud or any gross or wilful neglect on his part and unless he did so, he should be deemed to have concealed the particulars of his income or furnished inaccurate particulars, for the purpose of section 271(1)(c). The position is that the moment the stipulated difference was there, the onus to prove that it was not the failure of the assessee or fraud of the assessee or neglect of the assessee that caused the difference shifted to the assessee but it has to be borne in mind that though the onus shifted, the onus that was shifted was rebuttable. If in an appropriate case, the Tribunal or the fact-finding body was satisfied by the evidence on the record and

inference drawn from the record that the assessee was not guilty of fraud or any gross or wilful neglect and if the Revenue had not adduced any further evidence, then, in such a case, the assessee cannot come within the mischief of the section and suffer the imposition of penalty [*CIT v Mussadilal Ram Bharose*, (1987) 165 ITR 14, 20 (SC)]. Also see, *CIT v Tulshi Sao Munshi Sao*, (1987) 165 ITR 496 (Pat).”.

Pages 4914-4915: section 271(1)(c):

On the subject “*Even after the Explanation, conscious concealment is needed*”, reference may also be made to *CIT v M. George & Bros.*, (1986) 160 ITR 511, 516 (Ker); *CIT v Hari Ram Sri Ram*, (1987) 167 ITR 578 (All); *CIT v Saraf Trading Corporation*, (1987) 167 ITR 909 (Ker).

Page 4915: section 271(1)(c):

On the subject “*Burden of proof in case the Explanation is attracted or where it is not attracted, on whom lies?*”, reference may also be made to *CIT v Hiralal Shankarlal*, (1987) 165 ITR 124 (Cal).

Page 4920: section 271(1)(c):

At the end of the paragraph titled “*The three presumptions of the Explanation and their rebuttal*”, add,—

“Approving the view taken by the Punjab and the Patna High Courts in *Vishwakarma Industries v CIT* [(1982) 135 ITR 652 (Punj—FB)] and *CIT v Nathulal Agarwala & Sons* [(1985) 153 ITR 292 (Pat—FB)], the Supreme Court, in *CIT v Mussadilal Ram Bharose* [(1987) 165 ITR 14, 22-23 (SC)] has laid down: ‘If the returned income is less than 80% of the assessed income, the presumption is raised against the assessee that the assessee is guilty of fraud or gross or wilful neglect as a result of which he has concealed the income but this presumption can be rebutted. The rebuttal must be on materials relevant and cogent. It is for the fact-finding body to judge the relevancy and sufficiency of the materials. If such a fact-finding body, bearing the aforesaid principles in mind, comes to the conclusion that the assessee has discharged the onus, it becomes a conclusion of fact. No question of law arises.’.

It has also been laid down [(1987) 165 ITR 14, 21-22 (SC)] that the initial burden of discharging the onus of rebuttal is on the assessee. Once that initial burden is discharged, the assessee would be out of the mischief unless further evidence was adduced. As to the nature of the explanation to be rendered by the assessee, the Supreme Court expressed their agreement [p. 22] with the Patna High Court’s view to the effect that it was plain on principle that it was not the law that the moment any fantastic or unacceptable explanation was given, the burden placed upon him would be discharged and the presumption rebutted. It was further agreed that it is not the law that any and every explanation by the assessee must be accepted. It must be an acceptable explanation, acceptable to a fact-finding body.

Also see, *CIT v H. Abdul Bakshi & Bros.*, (1986) 160 ITR 94 (AP—FB); *CIT v Surinder Singh*, (1986) 160 ITR 456 (Punj); *CIT v Tulshi Sao Munshi Sao*, (1987) 165 ITR 496 (Pat); *CIT v Meerut Construction Co.*, (1987) 166 ITR 702 (All); *CIT v Standard Mercantile Co.*, (1987) 166 ITR 39 (Pat); *CIT v Saraf Trading Corporation*, (1987) 167 ITR 909 (Ker); *CIT v Pawan Kumar Dalmia*, (1987) 168 ITR 1 (Ker)."

Page 4924: section 271(1)(c):

At the end of the page, *add*,—

"Thus, Explanation can be invoked even in case of a best judgment assessment.—The *Explanation* to section 271(1)(c) applies even in cases of best judgment assessment under section 144 of the Act. Therefore, the mere fact that the assessee's income was estimated under section 144 read with section 145(2) would not absolve the assessee from discharging the burden of proving that failure to return correct income did not arise from fraud or gross or wilful neglect. In a case where the Income-tax Officer or the taxing authority finds that in maintaining accounts, the assessee has regularly employed a particular method and does not make any investigation to find or does not find any defect in the accounts and accepts the accounts as they are, he is bound to compute the income in accordance with the accounts maintained by the assessee. Therefore, when the assessee represents to the taxing authority that its accounts are maintained by a method of accounting regularly employed, he expects the Income-tax Officer to act upon such method and compute the income accordingly. If, in such a case, defects in maintaining accounts are noticed and the book result is rejected, a heavy burden lies on the assessee to establish that the income returned by it was *bona fide* and proper [*Addl. CIT v Chandravilas Hotel*, (1987) 165 ITR 300, 316, 318 (Guj)]. Also see, *CIT v Mediwala & Co.*, (1987) 65 CTR (MP) 13."

Page 4925: section 271(1)(c):

On the subject "*Assessed income to be reprocessed for testing applicability of the Explanation*", reference may also be made to *CIT v Calcutta Credit Corporation*, (1987) 166 ITR 29 (Cal).

Page 4926: section 271(1)(c):

In lines 25-26 from top, after "24 Taxman 629 (Punj)", *add*,—"= (1986) 159 ITR 709 (Punj); *CIT v Surinder Singh*, (1986) 160 ITR 456 (Punj); *Basanta Mal Tilak Ram v CIT*, (1987) 163 ITR 476 (Punj); *CIT v Smt. Satnam Malik*, (1987) 167 ITR 764 (Raj); *CIT v M. N. Chatterjee*, (1987) 64 CTR (Pat) 314" [holding that the *ratio* of *Anwar Ali's* case is no longer attracted for the construction of section 271(1)(c) read with the 1964-*Explanation*].

Page 4927: section 271(1)(c):

After line 8 from top, *add*,—

"At the same time, when a plea of presumption based on the *Explana-*

tion to section 271(1)(c) was raised before the Tribunal, the Tribunal cannot reject that contention on the ground that the *Explanation* was not taken support of by the Income-tax Officer and was not pleaded before the first appellate authority [*CIT v Rajeshwar Singh*, (1986) 162 ITR 173, 179 (Punj)].”.

Page 4927: section 271(1)(c):

Before line 13 from bottom, *add*,—

“No penalty survives after deletion of the additions made.—Where the additions made in the assessment order, on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment and, therefore, in such a case no such penalty can survive and the same is liable to be cancelled [*D. L. F. United (Pr.) Ltd. v CIT*, (1986) 159 ITR 353 (Del); *CIT v Dr. D. R. Anand*, (1987) Taxation 86(3)-277 (Raj); *CIT v Bahri Bros. Pr. Ltd.*, (1987) 167 ITR 880 (Pat); *CIT v Sukhdeo Charity Estate*, (1987) 63 CTR (Raj) 178]. Similarly, a penalty order cannot stand when the assessment itself is vacated [*CIT v Bhagwan Ltd.*, (1987) 60 CTR (Cal) 105; *CIT v Ram Lal Manohar Lal*, (1986) Taxation 82(3)-450 (Del)].”

Page 4928: section 271(1)(c):

After serial No. 13, listing the cases where penalty was found to be justified on the basis of the *Explanation* to section 271(1)(c) (assessment years 1964-65 to 1975-76), *add*,—

- “14. *Vimalchand Bhimsen v CIT*, (1986) 159 ITR 941 (MP) [the assessee gave no plausible explanation].
15. *Buddhadeb Dutta v CIT*, (1987) 166 ITR 428 (Cal) [no evidence adduced regarding unexplained investment].
16. *Rameshwarlal Sewdatrai v CIT*, (1987) 166 ITR 439 (Cal) [no explanation furnished regarding discrepancy in accounts].”

Page 4929: section 271(1)(c):

After serial No. 21, listing the cases where, on facts, the burden cast by the *Explanation* was held to be discharged, *add*,—

- “22. *CIT v H. Abdul Bakshi & Bros.*, (1986) 160 ITR 94 (AP—FB) [letters of confirmation and sworn statements of creditors relating to the factum of lending the amounts in question were held constituting *prima facie* evidence having the effect of discharging the initial burden of proof].
23. *CIT v Himmat Ram Laxmi Narain*, (1986) 162 ITR 619 (Punj) [assessee's explanation was accepted as plausible one]. Also see, *CIT v Himmat Ram Laxmi Narain*, (1987) 166 ITR 633 (Punj).
24. *CWT v Akshay Kumar Sanghi*, (1987) 163 ITR 43 (Raj).”.

Page 4930: section 271(1)(c):

After serial No. 16, giving the illustrative cases where the penalty (for assessment years 1964-65 to 1975-76) was held justified, *add,—*

- “17. *Mooiji Jatmal v CIT*, (1986) 160 ITR 475 (MP) [the assessee did not even care to appear before the ITO and discharge the burden of proof which lies on him].
18. *Dr. (Mrs.) K. D. Arora v CIT: CIT v Dr. (Mrs.) K. D. Arora*, (1986) 162 ITR 481 (Pat) [no material was adduced to prove gifts received].
19. *Badri Prasad Om Prakash v CIT*, (1987) 163 ITR 440 (Raj).
20. *Arya Confectionery Works v CIT*, (1987) 163 ITR 840 (MP) [assessee was found to carry on a *benami* business].
21. *Chuhadmal Takanmal v CIT*, (1987) 166 ITR 12 (MP) [value of watches seized by the excise department assessed under section 69A—no proof by the assessee that there was no concealment].
22. *CIT v R. Leela Vasanth Nair*, (1987) 167 ITR 837 (Ker).
23. *Thakur Veerpal Singh v CIT*, (1987) Taxation 84(3)-20 (MP) [Tribunal found that the assessee was guilty of not returning the correct assessable income].
24. *Atul Kumar Dcovrat & Co. v CIT*, (1987) 168 ITR 286 (Cal) [assessee consciously and deliberately claimed a loss on revaluation and sale of certain shares, claim of loss rejected].

Also see, *B. Kishanlal Khandsari Sugar Mills Ltd. v CIT*, SLP (Civil) No. 9232 of 1987: (1987) 167 ITR (St.) 63 (SC).”

Page 4932: section 271(1)(c):

After serial No. 23, giving the illustrative cases where the penalty (for assessment years 1964-65 to 1975-76) was held not justified, *add,—*

- “24. *CIT v M. George & Bros.*, (1986) 160 ITR 511 (Ker) [addition made on the basis of full particulars furnished before the assessment].
25. *CIT v Punjab Tyres*, (1986) 162 ITR 517 (MP) [surrendering a certain amount for taxation does not amount to concealment].
26. *Dr. (Mrs.) K. D. Arora v CIT: CIT v Dr. (Mrs.) K. D. Arora*, (1986) 162 ITR 481 (Pat) [marginal difference in the cost of construction as disclosed by the assessee and the cost as estimated by the department].
27. *C. M. Shivamallappa v CIT*, (1987) 163 ITR 725 (Karn) [assessment reopened on the basis of voluntary disclosure of receipts by the assessee].
28. *CIT v Late G. D. Naidu*, (1987) 165 ITR 63 (Mad) [assessee contending for a particular position contrary to the view taken by the ITO].

29. *CIT v Calcutta Credit Corporation*, (1987) 166 ITR 29 (Cal) [mere addition does not automatically lead to penalty, more particularly where two opinions on the same facts possible].
30. *Prahlad Maliram v CIT*, (1987) 166 ITR 149 (Raj) [where there was no evidence of concealment of income].
31. *CIT v Hari Ram Sri Ram*, (1987) 167 ITR 578 (All) [Tribunal found that there was no evidence of concealment].
32. *CIT v Chaturbhuj Bhanwarlal*, (1987) 166 ITR 659 (Raj) [the ITO did not find any item in the books of account to be false].
33. *CIT v Saraf Trading Corporation*, (1987) 167 ITR 909 (Ker) [the assessee was found to have discharged the burden of proving that there was no concealment of income].
34. *CIT v Pawan Kumar Dalmia*, (1987) 168 ITR 1 (Ker) [it was found by the Tribunal that there was nothing to show that the plea of the assessee that a particular amount did not belong to him was false or inherently impossible].”.

Pages 4932-4933: section 271(1)(c):

At the end of the paragraph titled “*When remand possible*”, add,—

“In the facts of the following cases, the matter was remanded to the Tribunal:—

(1) *CIT v Surinder Singh*, (1986) 160 ITR 456 (Punj) [where the Tribunal decided the case without applying the *Explanation*].

(2) *Addl. CIT v Chandmull Radha Kishun*, (1986) 161 ITR 172 (Pat) [for decision afresh as to whether penalty was to be imposed or not on the basis of the finally assessed income as per Tribunal’s order].

(3) *CIT v Raizally Abidally*, (1987) 163 ITR 216 (Bom) [for considering whether the assessee had discharged the initial burden under the *Explanation*].

(4) *CIT v Hiralal Shankarlal*, (1987) 165 ITR 124, 130-31 (Cal) [for rehearing the appeal in the light of the observations made in the judgment and if necessary after permitting the parties to adduce fresh materials].

(5) *Addl. CIT v Chandravilas Hotel*, (1987) 165 ITR 300 (Guj).

(6) *CIT v Meerut Construction Co.*, (1987) 166 ITR 702 (All) [where the Tribunal completely lost sight of the *Explanation*].

(7) *Addl. CIT v Dwarkadas Devkinandan*, (1987) 167 ITR 277 (Raj) [where the Tribunal cancelled the penalty without considering the *Explanation*].

(8) *CIT v Smt. Satnam Malik*, (1987) 167 ITR 764 (Raj) [as the Tribunal did not examine the facts or the explanation of the assessee keeping in view the provisions of the *Explanation*].

(9) *CIT v Sait Khubchand Perumal*, (1987) Taxation 87(3)-10 (AP) [for rehearing the appeal on the basis of the *Explanation*].”.

Page 4936: section 271(1)(c):

After line 16 from top, *add*,—

“It may be noted that *Explanation 5* has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986.”.

Page 4948: section 271(1)(c):

In line 18 from top, after “51 CTR (Bom) 299”, *add*,—“(1987) 163 ITR 210 (Bom); *CIT v Manilal Tribhuwandas*, (1986) 26 Taxman 143 (MP). Cf. *CWT v Laljee Ram Bhagat*, (1987) 164 ITR 60 (Pat)” [holding that the quantum of penalty must be determined with reference to the law prevailing on the day on which the return concealing the income was filed].

Page 4948: section 271(1)(c):

After line 21 from top, *add*,—

“In *CIT v M. N. Chatterjee* [(1987) 64 CTR (Pat) 314], relying on *Smt. Maya Rani Punj v CIT* [(1986) 157 ITR 330 (SC)], a case relating to penalty under section 271(1)(a) and not section 271(1)(c), it has been held that the penalty under section 271(1)(c) is to be levied in terms of the law applicable on the day on which the penalty proceedings were initiated by the Income-tax Officer. With due respect, the Patna decision requires reconsideration.”.

Page 4952: section 271(2):

In line 4 from top, after “50 CTR (MP) 213”, *add*,—“(1986) 160 ITR 593 (MP); *CIT v N. G. K. Electrical Industries*, (1987) 163 ITR 573 (Bom); *CIT v E. H. Katnawala & Co.*, (1987) 63 CTR (Bom) 245; *CIT v Govindram & Co.*, (1987) 168 ITR 613 (Bom)” [holding that for the purpose of levying penalty under section 271(1)(i), the registered firm is to be treated as an unregistered firm and on that basis the calculation of tax payable by the registered firm is to be ascertained].

Page 4953: section 271(2):

At the end of line 4 from top, *add*,—“The Patna Full Bench decision [(1985) 152 ITR 261 (Pat—FB)] has been followed in *Jamunadas Mannal v CIT* [(1987) 164 ITR 66 (Pat)].”.

Page 4953: section 271(2):

At the end of the paragraphs titled “*Penalty on a registered firm overlooking provisions of section 271(2)—result*”, *add*,—

“In *Ramanand Singh & Co. v CIT* [(1987) 164 ITR 78 (Pat)], it has been held that overlooking the provisions of section 271(2) is a mistake of law which can be rectified under the provisions of section 154 by the authority levying the penalty.”.

Page 4954: section 271A:

At the end of the paragraph titled "*Legislative amendment*", *add*,—

"Section 271A has also been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*."

Page 4956: section 271B:

After the paragraph titled "*Insertion*", *add*,—

"**Legislative amendment.**—Section 271B has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*."

Page 4959: section 272A:

After line 25 from top, *add*,—

"**III. The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.**—Section 272A(2) has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause or excuse,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*."

IV. The Finance Act, 1987.—Section 272A(2)(a) has been amended by this Act by substituting the words, figures and letter 'or section 285B' for the words, figures and letter ' , section 285, section 285B or section 286', with effect from 1st June, 1987. The substitution is consequential to the omission, by that Act, of sections 285 and 286."

Page 4962: section 272AA:

After line 8 from top, *add*,—

"**Legislative amendment.**—Section 272AA has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*."

Page 4962: section 272B:

After the paragraph titled "*Insertion*", *add*,—

"Legislative amendment.—Section 272B has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*."

Page 4963: new section 272BB:

Before the text of section 273, *add*,—

"New section 272BB.—The Finance Act, 1987 (11 of 1987), has inserted a new section 272BB, which makes provisions for levy of penalty for failure to comply with the provisions of section 203A, with effect from 1st June, 1987. For the scope and effect of the newly inserted section 272BB, reference may be made to paragraph 40.2 of the departmental circular No. 495, dated 22nd September, 1987, which has been reproduced at page 6589, *ante*."

Page 4971: section 273:

Before line 6 from bottom, *add*,—

"VII. The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.—Section 273 has also been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words 'without reasonable cause', wherever they occur. For the scope and effect of such amendment, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*."

Page 4976: section 273:

On the subject of interpretation of a marginal note, reference may also be made to—

(1) *K. P. Varghese v ITO*, (1981) 131 ITR 597, 609-610 (SC) [It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it *prima facie* furnishes some clue as to the meaning and purpose of the section].

(2) *Khoday Industries Pr. Ltd. v CIT*, (1987) 163 ITR 646 (Karn) [It is well-settled that heading of a section generally gives a clue to the understanding of the section though it cannot control the plain language of the section].

(3) *Film Exhibitors, Guild v State of Andhra Pradesh*, AIR 1987 AP 110, 117 (FB) [It is now well-settled that marginal note is a part of the section. It is key to open mind of the legislature affording guidance in understanding their intendment].

(4) *Badri Prasad Gupta v State of Bihar*, AIR 1986 Pat 186, 191 (FB) [It is well-settled that the marginal note of a section does not necessarily or wholly control the provision].

Page 4977: section 273:

After line 16 from top, *add*,—

“Penalty held possible in the course of rectification proceedings.—In *CIT v Mamta Tiwari* [(1987) Taxation 86(3)-257 (MP)], the penalty proceedings under section 273 were initiated in the course of rectification proceedings under section 155. It was held that the order passed under section 155 was part of the proceedings of assessment under section 143. Therefore, the initiation was validly made. Also see, *CIT v Prem Kumar Sethia*, (1987) Taxation 86(3)-301 (MP).”

Pages 4977-4978: section 273:

On the subject “*Penalty for defaults under the 1922 Act*”, reference may also be made to *CIT v Central Dyes & Chemicals Co.*, (1987) 61 CTR (Bom) 225.

Page 4988: section 273:

At the end of the paragraph titled “*Law applicable*”, *add*,—

“In *Gwalior Palace v CIT*, (1987) Taxation 87(3)-43 (AP)], it has been held that the law applicable for the assessment year 1976-77 is the one that was in force at the beginning of the assessment year, viz., on 1st April, 1976. The amendments, which came into force with effect from 1st June, 1978, are not relevant.”

Page 4989: section 273:

After serial No. (3), discussing cases where existed a reasonable cause for non-furnishing of the estimate, *add*,—

“(4) *CIT v Roshanlal Kasliwal*, (1987) 32 Taxman 527 (Raj).”

Page 4990: section 273:

After line 8 from top, *add*,—

“AAC’s power to enhance penalty.—The Appellate Assistant Commissioner has power under section 251(1)(b) to enhance the penalty levied under section 273 [*Bhoomareddy Bros. v CIT*, (1987) 163 ITR 854 (Karn)].”

Page 4997: section 273A:

On the subject “*Concept of section 273A*”, reference may also be made to *Jyoti Steels v CIT*, (1987) 166 ITR 558, 564 (All)

Pages 4999-5000: section 273A:

On the subject "*Conditions for waiver or reduction of penalty or interest*", reference may also be made to *Surjit Singh v CIT*, (1986) 161 ITR 1 (Punj).

Page 5000: section 273A:

On the subject "*Power must be exercised on fulfilment of the conditions*", reference may also be made to *Shital Prasad v CIT*, (1986) 161 ITR 259, 266 (All).

Page 5002: section 273A:

On the subject "*Even an old assessee can avail the relief under section 273A*", reference may also be made to *Jaswant Singh v CIT*, (1986) 160 ITR 949 (Punj).

Page 5008: section 273A:

Before line 14 from bottom, *add,—*

"Explanation 2 to section 273A, as it stood between 1-10-1984 and 23-5-1985.—A new *Explanation 2* was inserted in section 273A(1) by the Taxation Laws (Amendment) Act, 1984 (67 of 1984), with effect from 1st October, 1984, and the same was omitted by the Finance Act, 1985, with effect from 24th May, 1985. For the scope and effect of the said *Explanation 2*, reference may be made to paragraph 37.2 of the departmental circular No. 394, dated 14th September, 1984, which has been reproduced at pages 4996-4997 of Vol. 5.

A perusal of that *Explanation 2* to section 273A(1) makes it clear that there are two essential requirements to avail of the benefit given under *Explanation 2*. *Firstly*, there has to be a full and true disclosure of the income and *secondly*, such a disclosure has to be made within 15 days of the seizure, if there is no full and true disclosure, the benefit cannot be availed of by the person whose books of account, etc., and valuables are seized. There is a time limit also for making the disclosure. That time limit is of 15 days of the seizure. Unless there is a full compliance with these requirements, the benefit under *Explanation 2* to section 273A(1) would not be available. Whether, there has been a full and true disclosure of income will be a question of fact. Similarly, whether such disclosure has been made within 15 days will also be a question of fact [*Shree Kishan v CIT*, (1987) 33 Taxman 91, 93 (All)]. The Commissioner has no power to extend the prescribed period of 15 days [*Satish Chandra Agarwal v CIT*, (1987) 168 ITR 481 (All); *Shree Kishan v CIT*, (1987) 33 Taxman 91, 93 (All)]."

Page 5008: section 273A:

Before line 8 from bottom, *add,—*

"Power of waiver, etc., under section 273A(4).—Apart from sub-section (1) of section 273A, power of waiver has been conferred under sub-section (4) also. Under this provision, the power is available even to relieve an

assessee of genuine hardship. The power is available not only to waive the amount of penalty but also to compound any proceeding for recovery of any such amount. From this, it would appear that the power of waiver can be exercised even while proceedings for recovery of penalty are going on. From this, it would further appear that the power of waiver may be exercised till the amount of penalty has not been finally recovered. If the power of waiver can be exercised under sub-section (4) till the amount has not been finally recovered, there will be no rational basis for depriving the Commissioner of the power to review his order passed under sub-section (1) at a stage earlier, *i.e.*, between the imposition of penalty and its final recovery [Per Mathur J., in *Shital Prasad v CIT*, (1986) 161 ITR 259, 266-267 (All)].

The power is exercisable notwithstanding any other provision in the Income-tax Act and provided the Commissioner comes to the conclusion with reasons for the same that if the same is not done, it would cause hardship to the assessee who has co-operated in assessment or recovery proceedings. The difference between sections 273A(1) and 273A(4) is obvious as powers under section 273A(1) are exercisable when the penalty is imposable or imposed and under sub-section (4) when the same becomes payable or even in the recovery proceedings. If an application under section 273A(1) for waiver is given when penalty becomes imposable, it can be given again under section 273A(4) when it becomes payable. If it has been moved at the earlier stage when it is imposed, even then at subsequent stage up to the recovery proceedings, the same can be made again and party may get relief if conditions under section 273A(4) are satisfied. Section 273A(4) to the extent mentioned above is rather in the nature of an exception to section 273A(1) but it is not in the nature of review of the order passed by the Commissioner earlier under section 273A(1) as it will be a fresh proceeding though it may result in variation or modification of the earlier order passed by the Commissioner [Per U.C. Srivastava J., in *Shital Prasad v CIT*, (1986) 161 ITR 259, 271-272 (All)].

In order to avail of the benefit of section 273A(4), it is for the assessee to make out a case that imposition of any penalty would cause genuine hardship to him. The circumstances obtaining in a particular case may not warrant such an order. This must be done to the satisfaction of the Commissioner of Income-tax. He must also satisfy the Commissioner that he co-operated in an enquiry relating to his assessment or in proceedings for the recovery of any amount due from him [*Jyoti Steels v CIT*, (1987) 166 ITR 558, 562 (All)].

The power conferred under section 273A(4) is discretionary in nature. Where the Commissioner has, in exercise of such discretionary power reduced the penalty by 50 per cent., the High Court would not interfere with such discretion [*Shiv Shanker Sitaram v ITAT*, (1987) 168 ITR 275 (All)].

Page 5009: section 273A:

After line 3 from top, *add*,—

“Still, it may be that having regard to the circumstances of a case, the Commissioner may direct that penalty proceedings may be dropped, while in another case, a partial reduction of penalty alone may meet the ends of justice [*Jyoti Steels v CIT*, (1987) 166 ITR 558, 564 (All)].

Order as per CIT's directions—not appealable.—An order of penalty passed by the Income-tax Officer in pursuance of the directions contained in the Commissioner's order under section 273A is not appealable [Cf. *Amrik Singh v CWT*, (1987) Taxation 87(3)-54 (Punj)].”.

Page 5010: section 273A:

After serial No. (19), discussing cases remanded for deciding the matter afresh, *add*,—

- “(20) where the rejection was made on the basis of irrelevant considerations [*Jaswant Singh v CIT*, (1986) 160 ITR 949 (Punj)].
- (21) where rejection was made on the basis of extraneous considerations which were collateral in nature [*Surjit Singh v CIT*, (1986) 161 ITR 1 (Punj)].
- (22) where the case was one of genuine hardship [*Sital Prasad v CIT*, (1986) 161 ITR 259 (All)].
- (23) where the application was rejected on the ground that the petitioner has not paid interest [*Ramesh Chand Gubrele v CIT*, (1987) 167 ITR 723 (All)].”.

Page 5011: new section 273B:

Before the text of section 274, *add*,—

“New section 273B.—A new section 273B, relating to penalty not to be imposed in certain cases, have been inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986. For the scope and effect of the newly inserted section 273B, reference may be made to paragraph 12.4(b) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6698-6699, *ante*.

The above section 273B has, subsequently, been amended by the Finance Act, 1987 (11 of 1987). The amendment is consequential to the insertion, by that Act, of a new section 272BB, with effect from 1st June, 1987.”.

Page 5016: section 274:

At the end of line 11 from top, *add*,—“But, where the hearing was adjourned without fixing the next date and the penalty order was passed long thereafter without any opportunity to the assessee of being heard, it cannot be said that the assessee was afforded a reasonable opportunity of being heard and, therefore, the imposition of the penalty was not valid [*Tarak Nath Gupta v CIT*, (1987) 166 ITR 468 (Cal)].”.

Page 5016: section 274:

At the end of line 13 of the paragraph titled "*Reasonable opportunity not given—result of*", add,—"*In Thakur V. Hari Prasad v CIT [(1987) 167 ITR 603 (AP)]*, it has been held that when an order under section 271(1)(c) is passed in violation of section 274(1), it is statutory violation and thereby an illegality has crept into the order. Such an order is amenable to correction under section 254 by the Tribunal. Such an order does not, thereby, become void but becomes illegal so long as it is not corrected in an appropriate proceeding. In that case, the illegality of the violation of section 274 was corrected by the Tribunal."

Page 5018: section 274:

In line 7 from bottom, after "*112 ITR 503, 508 (Cal)]*," add,—"*In other words, the Income-tax Officer was not required to quantify the exact amount of penalty to be levied and thereafter to refer the same to the Inspecting Assistant Commissioner [Hindustan Asbestos Cement Product v CIT, (1987) 167 ITR 108, 116 (Raj)]*."

Page 5020: section 274:

At the end of the page, add,—

"*In Oriental Rubber Works v ITO [(1987) 166 ITR 387 (Cal)]*, the penalty matter was referred to the IAC by the Income-tax Officer 'A'. Subsequently, the assessee's income-tax file was transferred to the Income-tax Officer 'B'. In the notice issued by the IAC under section 274 read with section 271(1)(c) to the assessee, it was mentioned that the penalty proceedings were referred to him by the Income-tax Officer 'B'. It was held that the IAC's notice was obviously incorrect. But, that by itself could not vitiate the entire penalty proceedings inasmuch as the initial reference by the Income-tax Officer 'A' was valid."

Page 5022: section 274:

In line 11 from bottom, after "*147 ITR 389 (Bom)*", add,—"; *CIT v J. K. Jute Mill Co., (1987) 163 ITR 816 (All); CIT v Abdullabhai Hassanali, (1987) Taxation 86(3)-119 (Bom)*" [holding that change in law during pendency of the penalty proceedings before the IAC does affect the jurisdiction of the IAC].

Page 5023: section 274:

In line 19 from top, after "*155 ITR 618 (Pat)*", add,—"; *CIT v Jankidas Mohan Lal, (1987) 163 ITR 756 (Pat); CIT v Badshah Prasad, (1987) 163 ITR 760 (Pat); CIT v Sait Khubchand Perumal, (1987) Taxation 87(3)-10 (AP)*" [holding that change in law during pendency of the penalty proceedings before the IAC does not affect the IAC's jurisdiction to levy such penalty].

Page 5023: section 274:

In line 4 from bottom, after “(1986) 50 CTR (MP) 213”, *add*,—“=(1986) 160 ITR 593 (MP); *Ratan Deo v CIT*, (1987) 163 ITR 837 (All); *Uma Maheshwari & Co. v CIT*, (1987) 167 ITR 628 (AP)” [holding that where a reassessment, relating to an assessment year prior to 1971-72, is completed on or after 1st April, 1971, the Income-tax Officer is competent to pass a penalty order in all cases where the concealment of income does not exceed Rs. 25,000].

Page 5024: section 274:

In line 9 of the paragraph titled “*Omission of section 274(2)—effect of*”, after “Taxation 79(3)-325 (MP)”, *add*,—“=(1986) 160 ITR 860 (MP); *CIT v Sujatha Industries*, (1987) 163 ITR 263 (Karn); *CIT v Jagannath Prasad Nankoo Prasad*, (1987) 168 ITR 52 (All); *CIT v Narain Singh Das*, (1986) 57 CTR (All) 290; *CIT v P. I. Issac*, (1987) Tax LR 1268 (Ker—FB)” [holding that on or after 1-4-1976, the IAC has no jurisdiction to pass a penalty order even though the penalty matter was referred to him earlier].

Page 5024: section 274:

In line 17 of the paragraphs titled “*Omission of section 274(2)—effect of*”, after “152 ITR 691 (Ker)”, *add*,—“; *Arya Confectionery Works v CIT*, (1987) 163 ITR 840 (MP); *Porwal Udyog (India) v CIT*, (1987) 167 ITR 808 (MP); *CIT v Kishan Lal Kanhya Lal*, (1987) Taxation 87(3)-96 (Raj); *CIT v New Beawar Traders*, (1987) Taxation 87(3)-98 (Raj)” [holding that even on or after 1-4-1976, the IAC has jurisdiction to pass a penalty order in a case referred to him earlier].

Also see, *CIT v Mohinder Lal*, (1987) 168 ITR 101 (Punj—FB), where the assessment was completed prior to 1-4-1976 but the reference was actually made on 23-12-1976; *P. V. Ibrahim v CIT*, SLP (Civil) No. 11421 of 1985: (1986) 159 ITR (St.) 107 (SC).

Pages 5031-5032: section 275:

On the subject “*Pending proceedings to be governed by the changed law*”, reference may also be made to *CIT v Jankidas Mohan Lal*, (1987) 163 ITR 756 (Pat); *CIT v Fair Weather Transport Corporation*, (1987) 165 ITR 48 (Pat).

Page 5032: section 275:

In line 12 of the paragraphs titled “*Whether the time bar of section 275 applies also to orders passed on remand*”, after “50 CTR (Guj) 83”, *add*,—“=(1986) 161 ITR 441 (Guj); *CIT v Dr. Manoranjan Mohanty*, (1987) Taxation 87(3)-23 (MP)” [holding that the time-bar of section 275 does not apply to a penalty order passed after the case was remanded by the appellate authority, etc.].

Page 5032: section 275:

Before line 7 from bottom, *add*,—

"The bar of limitation under section 275 applies only where the order of penalty is passed by the primary authority. It does not apply to an order of penalty passed by the Tribunal [*Thakur V. Hari Prasad v CIT*, (1987) 167 ITR 603 (AP)].".

Page 5041: section 276A:

After the paragraph titled "1922 Act", *add*,—

"**Legislative amendment.**—Section 276A has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause or excuse,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(d) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at page 6700, *ante*."

Page 5042: section 276AB:

After the paragraphs titled "Insertion", *add*,—

"**Legislative amendment.**—Section 276AB has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause or excuse,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(d) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at page 6700, *ante*."

Page 5043: section 276B:

At the end of the paragraphs titled "*Legislative amendment*", *add*,—

"Section 276B has also been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause or excuse,'. For the scope and effect of such amendment, reference may be made to paragraph 12.4(d) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at page 6700, *ante*."

Page 5046: section 276B:

At the end of the paragraph titled "*Ingredients of offence under section 276B*", *add*,—

"The duty to deduct tax at source under any of the provisions in that respect cannot be said to be discharged by depositing the tax to the credit of the Central Government some time before the complaint is made against the failure to deduct tax at source [*Rishikesh Balkishandas v ITO*, (1987) 167 ITR 49, 53 (Del)].

Section 194A, which requires the person making any payment of interest to deduct tax source at the rate in force, imposes an absolute liability and for an offence under section 276B read with section 194A of deficient deduction or non-deduction, which is a conscious act, *mens rea* is not required [*Rishikesh Balkishandas v ITO*, (1987) 167 ITR 49, 60 (Del)].

It may be noted that section 276B has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words, etc. “ , without reasonable cause or excuse,” from that section 276B.

Continuing offence.—The offence under section 276B is a continuing offence and would terminate only when the deposit of the tax deducted is made. Non-payment of tax in accordance with law deducted from the salary of every employee each month would be a distinct offence [*Jagannath Prasad Jhalani v Regional Provident Fund Commissioner*, (1987) 168 ITR 341, 355 (Del)]. Also see, pages 5087-5088 of Vol. 6.”.

Page 5049: section 276B:

Before the text of section 276C, *add*,—

“A firm has been held to be prosecuted for an offence under section 276B even though that section provides a minimum punishment of imprisonment. In the case of conviction, a sentence of fine only can be imposed on the firm [*Rishikesh Balkishandas v ITO*, (1987) 167 ITR 49, 55 (Del), *applying Municipal Corporation of Delhi v J. B. Bottling Co. Pr. Ltd.*, (1975) Cr. LJ 1148 (Del—FB) and holding that *D. C. Goel v B. L. Verma*, (1974) 93 ITR 63 (Del) is no longer good law].

But, in *Adding Machines (India) Pr. Ltd. v State* [(1987) 167 ITR 171 (Cal)], it has been held that a company cannot be prosecuted under section 276B. However, a principal officer of a company can be prosecuted for an offence punishable under section 276B and in case he is found guilty, he has to suffer imprisonment but only for the offence committed by himself and not for any offence committed by the company.

In *ITO v Rama Nand & Co.* [(1987) 163 ITR 702 (Pat)], a complaint under section 276B was filed against the respondent for non-deduction of tax under section 194C(2) from payments made by the respondent-contractor to the alleged sub-contractors. The trial magistrate discharged the respondent on the ground that the respondent was not a ‘contractor’ as contemplated by section 194C and, therefore, the provisions of section 194C(2) could not be said to have been contravened. It was held that the trial magistrate was justified in discharging the respondent.”.

Page 5051: section 276C:

Before line 14 from bottom, *add*,—

“Provisions explained.—There is a distinction between avoiding tax which is not made penal and evasion of tax which is made punishable. Sub-sections (1) and (2) of section 276C deal with two different situations.

Sub-section (1) deals with 'evasion' of tax, penalty or interest chargeable or imposable under the Act. Therefore, what is contemplated is evasion before charging or imposing tax, penalty or interest. That may include wilful suppression in the returns before assessment and completion. But sub-section (2) deals with evading 'the payment of tax, penalty or interest under the Act'. The words 'chargeable' or 'imposable' are not there. What sub-section (2) says is 'without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable. . . .'. Therefore, sub-section (2) takes in cases of tax evasion after 'charging' or 'imposition'. Evasion, after completion of assessment, also comes within the operation of the sub-section.

What the *Explanation* to section 276C deals with is 'wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or payment thereof' contemplated in sub-section (1) and not 'payment of any tax, penalty or interest under this Act' as contemplated in sub-section (2). Therefore, the *Explanation* is concerned with only sub-section (1) and not sub-section (2) [*G. Viswanathan v ITO*, (1987) 167 ITR 103, 107 (Ker)].

Page 5052: section 276C:

Before the text of section 276C, *add*,—

"Thus, for launching a prosecution for an offence under section 276C, it is not necessary that a regular assessment must have been made prior to such launching. The ingredients of the offence under that section 276C have to be proved by the prosecution in order to succeed the complaint filed before the criminal court [*Gopal Lal Dhamani v ITO*, (1987) 32 Taxman 631, 635 (Raj)]. In that case, it has been held that there is no bar in launching a prosecution after passing of an order under section 132(5).

But, the pendency of proceedings before the Settlement Commission acts as a bar.—It may be that an assessee's application for settlement had been allowed to be proceeded with by the Settlement Commission and the said proceedings are pending before the Commission. The Commission is well entitled to, or is rather obliged to, go into the question whether the assessee had filed a false return with a false verification to evade tax. Also, the Settlement Commission had jurisdiction and power under section 245H to grant or tender immunity to an assessee from prosecution for any offence under the 1961 Act. In this view of the legal position, the Commissioner cannot direct or authorise the filing of a complaint against the assessee whose settlement application is pending before the Settlement Commission. This is more so in the face of the provisions of section 245F(1) whereunder the Commission alone had the exclusive jurisdiction to launch or not to launch any prosecution against such an assessee [*R. I. Chadha v ITO*, (1987) 168 ITR 591 (Punj)].

In *Dr. (Mrs.) Geeta Gupta v IAC* [(1987) 168 ITR 222 (Del)], continuation of criminal proceedings under sections 276C and 277 was quashed keeping in view the passing of the order by the Settlement Commission

allowing the settlement application of the petitioner to be proceeded with after rejecting the objections raised by the Commissioner under section 245D(1A) and holding the view that no concealment of income on the part of the petitioner had been established nor was likely to be established."

Page 5054: section 276CC:

After line 11 from top, *add*,—

"In the facts of *Kalyan Sen v GTO* [(1987) 164 ITR 565 (Cal)], the criminal complaint filed under section 35(1)(a) of the Gift-tax Act, 1958, for failure, without reasonable cause, to furnish return in due time, was held to be without any basis and was, therefore, quashed."

Page 5057: section 276D:

After line 10 from top, *add*,—

"A consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom [*S. Sundaram Pillai v V. R. Pattabiraman* AIR 1985 SC 582, 589]."

Page 5058: section 276DD:

After line 5 from top, *add*,—

"**Legislative amendment.**—Section 276DD has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause or excuse, '. For the scope and effect of such amendment, reference may be made to paragraph 12.4(d) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at page 6700, *ante*."

Page 5058: section 276E:

Before the text of section 277, *add*,—

"**Legislative amendment.**—Section 276E has been amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986, by omitting the words ' , without reasonable cause or excuse, '. For the scope and effect of such amendment, reference may be made to paragraph 12.4(d) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at page 6700, *ante*."

Page 5060: section 277:

On the subject "*Ingredients of offence under section 277*", reference may also be made to *Vijaya Commercial Credit Ltd. v ITO*, (1987) 65 CTR (Karn) 74, 77.

Page 5060: section 277:

Before line 11 from bottom, *add*,—

“It may be noted that the provisions of section 278E, operative on and from 10th September, 1986, are also relevant in this regard. Section 278E makes provisions for raising a presumption as to culpable mental state.

Who can be prosecuted for an offence under section 277?—For an offence under section 277 only that person who actually makes a statement or verifies the return filed under the Act is liable to be prosecuted, if it can be shown that the said statement or the verification was false to his knowledge or he believed it to be false or did not believe it to be true [*Jasbir Singh v ITO*, (1987) 33 Taxman 191, 193 (Punj)]. In that case, the prosecution proceedings against those partners of a firm who never signed the verification of the impugned return nor made any statement before the Income-tax Officer or produced any account in that regard were quashed.”

Page 5063: section 277:

At the end of the paragraph titled “*Person*” in section 277—*connotation of*, *add*,—

“In *Vijaya Commercial Credit Ltd. v ITO* [(1987) 65 CTR 74, 77 (Ker)], the view taken is that although the word or expression ‘person’ as defined in section 2(31) is wide enough to include a company or other juristic person, but having regard to the fact that sentence of imprisonment has been made compulsory, it cannot be said that the expression ‘person’ has been used in section 277 in that sense inasmuch as it is not possible for the court, on conviction, to impose sentence of imprisonment.”

Page 5063: section 277:

On the subject “*Filing a revised return does not mitigate the offence of furnishing a false return*”, reference may also be made to *S. R. Arulprakasham v Smt. Prema Malini Vasan, ITO*, (1987) 163 ITR 487 (Mad).

Page 5063: section 277:

Before the paragraph titled “*Place of trial*”, *add*,—

“Jurisdiction to file a complaint.—An Income-tax Officer before whom a proceeding under the 1961 Act is pending is deemed to be a civil court for purposes of section 195 of the Criminal Procedure Code, 1973. A prosecution under sections 193 and 196 of the Indian Penal Code, 1860, can never be considered to be a proceeding under the 1961 Act. Section 127 of the 1961 Act authorises the Commissioner to transfer any case from one Income-tax Officer to any other Income-tax Officer. It is clear, however, that the transfer can have effect only in respect of proceedings under the 1961 Act. Hence, it follows that the court before which the offence under sections 193 and 196 was committed should file the complaint as contemplated by section 195(1)(b)(i) of the Criminal Procedure Code. No superior court can by an order of transfer of the case to another

court confer jurisdiction upon the transferee court to file a complaint [*ITO v Kerala Oil Mills*, (1986) 162 ITR 292, 294, 297 (Ker)]. In that case, the Income-tax Officer to whom the income-tax file of the respondent was transferred filed the complaint. Such complaint was held to be incompetent and hence not maintainable since that Officer was neither the original court (Officer) before whom the offence was committed nor the superior court to whom the original court (Officer) was subordinate.”.

Pages 5063-5064: section 277:

At the end of the paragraph titled “*Place of trial*”, add,—

“Section 177 of the Code of Criminal Procedure, 1973 (2 of 1974), provides that every offence shall *ordinarily* be inquired into and tried by a court within whose local jurisdiction it was committed. The provisions contained in that section 177 govern all trials held under the provisions of the new Code, including trials of offences punishable under local or special laws. The word ‘ordinarily’ used in that section means except where provided otherwise in the Code itself or other law [*Narumal v State of Bombay*, AIR 1960 SC 1329]. The 1961 Act does not provide for trial of offences under the 1961 Act otherwise than as provided in section 177 of the Code. Thus, the offence under section 277 can be tried only by the court within whose jurisdiction that offence has been committed [*J.K. Synthetics Ltd. v ITO*, (1987) 168 ITR 467, 470 (Del)].

An offence under section 277 can be said to have been committed at the place where the false statement, etc., is delivered. The offences under section 277 of the 1961 Act and section 177 of the Indian Penal Code are complete the moment the false statement is delivered. Similarly, offences under section 278 of the 1961 Act and section 109 of the IPC are complete where the abetment was made. These offences are not at all dependent on assessment proceedings. The question of convenience is of no relevance because that cannot override the provisions contained in section 177 of the Code of Criminal Procedure [*J. K. Synthetics Ltd. v ITO*, (1987) 168 ITR 467, 471 (Del)]. In that case, the High Court directed the complaint to be transferred to the proper criminal court.”.

Page 5066: section 277:

After serial No. (6), dealing with cases where assessee was acquitted of the charge under section 277, add,—

“(7) *Jog Raj v State of Punjab*, (1987) 164 ITR 763 (Punj) [where the assessee offered peak credit of the loan transactions for assessment for purchasing peace with the department and on that basis the accused was convicted].

(8) *ITO v T. Abdul Majeed*, (1987) 64 CTR (Ker) 266 [where apart from the appellate order of the Tribunal setting aside the penalty order passed against the respondent (accused), the evidence on record did not show that the respondent filed a return which was false and incorrect to his knowledge].”

Page 5066: section 277:

At the end of the paragraphs titled "*Cases where the person concerned was convicted*", *add*,—

"In the facts of *Rudemul v State* [(1987) 34 Taxman 440 (AP)], the conviction of the assessee for the offence under section 277 was confirmed even though he was acquitted of the offences under sections 193 and 197 of the Indian Penal Code."

Page 5066: section 277:

Before line 12 from bottom, *add*,— :

"Other cases relating to prosecution for offences under sections 276C and 277.—Some of the other cases relating to criminal proceedings for offences under sections 276C and 277 are—

(1) *Basal Tool Co. v ITO*, (1987) 167 ITR 24 (Punj) [The firm and one of the partners who filed a false return were held liable to be prosecuted for offences under sections 276C and 277. But, prosecution against a partner, who filed the revised correct return, was held not justified].

(2) *G. Viswanathan v ITO*, (1987) 167 ITR 103 (Ker) [Assessee, making gift of attached properties to his minor sons, was held to stand trial for an offence under section 276C(2) of wilfully attempt to evade tax].

(3) *Mohan Lal Agarwalla v State of Bihar*, (1987) 167 ITR 184 (Pat) [No. prosecution under section 276C is possible for offences committed prior to 1st October, 1975. The assessee was held liable to be prosecuted for the alleged offence under section 277 as he had filed a return in response to a notice under section 148 showing a larger income].

(4) *D.N. Bhasin v Union of India*, (1987) 34 Taxman 451 (Punj) [The criminal proceedings for offences under sections 276 and 277 were quashed where the additions on the basis of which the prosecution was started were deleted by the appellate authority].

(5) *Devi Dayal v Union of India*, (1987) 34 Taxman 526 (Punj) [Mere filing of an appeal by the petitioner against the imposition of penalty under section 271(1)(c) will not be a bar to the continuance of proceedings in a criminal court].".

Page 5067: section 278:

After line 11 of the paragraphs titled "*Abetment of falsification also punishable*", *add*,—

"Merely preparing returns and statements on the basis of the accounts placed before the chartered accountant and having the same typed in his letter-head and delivering the same to the client for signature will not make the chartered accountant liable even if the returns and statements are subsequently found to be false on the basis of new materials gathered by the Department. The mere fact that the returns which were later found to be false were prepared by the chartered accountant and were typed by him in his letter-head cannot mean that he was also a party to the filing of false

returns. Unless and until there is a specific allegation that in spite of certain documents having been placed before the chartered accountant, he had prepared the statements that were filed before the Income-tax Officer and which were found to be false, the question of abetment or conspiracy cannot arise [*Navarathna & Co. v State*, (1987) 62 Comp. Cas. 832 (Mad)].”

Page 5070: new section 278AA:

At the beginning of the page, *add*,—

“New section 278AA.—A new section 278AA, relating to punishment not to be imposed in certain cases, has been inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986. For the scope and effect of the newly inserted section 278AA, reference may be made to paragraph 12.4(d) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at page 6700, *ante*.”.

Page 5072: section 278B:

On the subject “*Ordinarily, no prosecution possible against a company*”, reference may also be made to *Vijaya Credit Corporation Ltd. v ITO*, (1987) 65 CTR (Karn) 74.

Pages 5072-5073: section 278B:

At the end of the paragraph titled “*Offences in case of a firm*”, *add*,—

“A firm has been held not liable to be prosecuted for the offences under sections 277 and 278 in respect of returns filed prior to 1st October, 1975 [*S. M. Badsha v ITO*, (1987) 168 ITR 332, 340 (Ker)].”

Page 5074: section 278B:

After line 2 from top, *add*,—

“Who may be prosecuted under section 278B?—If the offence under the 1961 Act provisions has been committed by a company [as defined in *Explanation (a)* to section 278B], the persons who may be held guilty and punished are—

- (1) the company itself,
- (2) every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, which may, in short, be described as person-in-charge of the company, and
- (3) any director [as defined in *Explanation (b)* to section 278B], manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, which may, in short, be described as an officer of the company.

Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person-in-charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or

all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 278B does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company [Cf. *Sheoratan Agarwal v State of Madhya Pradesh*, AIR 1984 SC 1824, 1825; *Badri Prasad Gupta v State of Bihar*, AIR 1986 Pat. 186 (FB)].

Still, before the person-in-charge or an officer of the company is held guilty in that capacity, it must be established that there has been an offence committed by the company itself. Where the company itself is not charged with the offence at all, the person-in-charge or an officer of the company cannot be prosecuted and punished by virtue of the provisions of section 278B [Cf. *State of Madras v C. V. Parekh*, AIR 1971 SC 447].

In *Rishikesh Balkishandas v ITO* [(1987) 167 ITR 49 (Del)], it has been held that a firm is liable to be prosecuted for an offence under section 276B even though that section provides a minimum punishment of imprisonment. But, in the case of conviction, a sentence of fine only can be imposed on the firm.

But in *Adding Machines (India) Pr. Ltd. v State* [(1987) 167 ITR 171 (Cal)], it has been held that a company cannot be prosecuted for an offence under section 276B because a company cannot be committed to prison. Also see, *Vijaya Commercial Credit Ltd. v ITO*, (1987) 65 CTR (Karn) 74.

In *Balaji Chit Funds v ITO* [SLP (Criminal) Nos. 351-355 of 1987: (1987) 165 ITR (St.) 226 (SC)], their Lordships of the Supreme Court has dismissed, by an order dated 12-2-1987, a special leave petition by the assessee, a partner in a firm, against the judgment dated 13-1-1987 of the Madras High Court in Cr. M. P. Nos. 12735-12739 of 1986 allowing amendment of a complaint to include the name of the partner on the application of the respondent-Income-tax Officer, where the Magistrate had dismissed criminal proceedings instituted against the firm on the ground that the firm was not a person and had not permitted amendment of the complaint to include the name of the partner.”.

Page 5074: section 278B:

In line 16 of the paragraphs titled “*Person in charge—meaning of*”, after “154 ITR 227 (Punj)”, add,— “; *Jai Gopal Mehra and Smt. Suman Mehra v ITO*, (1986) 161 ITR 453 (Punj); *O.T.C. Agencies v ITO*, (1987) 30 Taxman 400 (Punj)” [holding that where the complaint does not contain any allegation that the petitioners were responsible for the conduct of the business of the firm, no criminal liability can be fixed on them]. Cf. *J. R. Grover v Asst. Director*, (1987) 13 Excise & Customs Cases 251 (Punj).

Page 5074: section 278B:

Before the text of section 278C, *add*,—

“Liability of persons in charge of a defunct company or firm.—If a human being has committed any contravention and dies before the prosecution or the conviction, the prosecution comes necessarily to an end. Similarly, where a company has committed an offence, if the company alone is liable, the prosecution and the conviction would also come to an end with the dissolution of the company. But, if along with the company human beings constituting the company are also liable, then the prosecution and the conviction would be possible, even after the dissolution of the company, as against the members of the company. The members who will be held responsible are those who were in charge of and were responsible to the company for the conduct of the business of the company [*Reserve Bank of India v Dhanalakshmi Funds (India) Ltd.*, (1987) 167 ITR 658, 663 (Mad)]. In that case, it was, on facts, held that the prosecution against persons who would be found to have been responsible to the defunct firms is possible and legal.”.

Page 5077: section 278D:

After line 5 from top, *add*,—

“It is true that section 278D read with section 132(4A) enables the criminal court to presume, *inter alia*, the truth of the contents of the books of account seized in the course of a search conducted under section 132. However, it is a presumption which can be rebutted. Moreover, the presumption envisaged therein is only a factual presumption. It is in the discretion of the criminal court, depending upon other factors, to decide whether the presumption must be drawn. The expression used in the subsection is ‘may be presumed’ as is used in section 114 of the Evidence Act. It is not a mandate that whenever the books of account are seized, the court shall necessarily draw the presumption, irrespective of any other factors which may dissuade the court from doing so [*ITO v T. Abdul Majeed*, (1987) 64 CTR (Ker) 266, 268-69].

New section 278E.—A new section 278E, relating to presumption as to culpable mental state, has been inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), with effect from 10th September, 1986. For the scope and effect of the newly inserted section 278E, reference may be made to paragraph 12.4(c) of the departmental circular No. 469, dated 23rd September, 1986, which has been reproduced at pages 6700-6701, *ante*.”.

Page 5081: section 279:

At the end of line 4 from top, *add*,— “In other words, an Income-tax Officer cannot file a complaint on his own initiative. He can file the complaint if he is authorised by the Commissioner in that behalf. It is sufficient

if the Commissioner directs him to file a complaint [*S. M. Badsha v ITO*, (1987) 168 ITR 332, 336 (Ker)].”.

Page 5081: section 279:

Before line 5 from bottom, *add*,—

“In *ITO v T. Abdul Majeed* [(1987) 64 CTR (Ker) 266], the proceedings under section 279(1) of the Commissioner were produced along with the complaint. In those circumstances, the acquittal of the respondent (accused) on the ground that there was no formal proof of sanction was not sustained.”.

Page 5081: section 279:

At the end of the paragraphs titled “Sanction”, *add*,—

“In the facts of *A. K. Roy v State of Punjab* [AIR 1986 SC 2160], the prosecution under the provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954), without written consent of the Central or State Government was held illegal.”.

Page 5082: section 279:

At the end of the paragraph titled “Proof of sanction”, *add*,—

“In *Mohan Lal Agarwalla v State of Bihar* [(1987) 167 ITR 184 (Pat)], it has been held that the requirement which is necessary for giving ‘sanction’ cannot be of the same standard when a case is to be instituted only under the instruction or at the instance of the Commissioner of Income-tax, as per the provisions of section 279(1). In that Patna case, the Commissioner issued direction under section 279(1) for launching prosecution under sections 276C and 277. In giving that direction the Commissioner had missed to take note of the fact that section 276C came into existence only on 1st October, 1975. It was held that on such a direction, prosecution could be launched for offence under section 277 only.”.

Page 5082: section 279:

Before line 8 from bottom, *add*,—

“Sanction not to be affected by modification of assessment order.—The mere fact that the Commissioner in his proceedings considered, *inter alia*, the assessment made by the Income-tax Officer which assessment was later interfered with by the appellate authorities, does not mean that the authority granted by the Commissioner ceased to be effective with the modification of the assessment order in appeal [*S. M. Badsha v ITO*, (1987) 168 ITR 332, 336 (Ker)].”.

Page 5084: section 279:

At the end of the paragraph titled “Result of the proceedings under the 1961 Act, how far binding on the criminal court”, *add*,—

“In the facts of *Dr. R. P. Gupta v IAC* [(1987) 168 ITR 33 (Del)], the complaint for offences under sections 276C and 277, which was based

on the addition in the original assessment, was quashed as the original assessment was set aside by the Commissioner (Appeals) for making a fresh assessment.”.

Page 5085: section 279:

At the end of the paragraph titled “*Criminal court’s power to adjourn due to pendency of certain proceedings under the 1961 Act*”, add,—

“In the facts of *Nemi Chand Garg v ITO* [(1986) 161 ITR 500 (Raj)], the High Court has, in exercise of its powers under section 482 of the Code of Criminal Procedure, 1973 (2 of 1974), directed the criminal court to keep the criminal proceedings under sections 276C and 277 stayed till the judgment of the Tribunal.

In *CIT v Sri Kishan Gupta* [SLP (Civil) No. 1944 of 1986: (1986) 159 ITR (St.) 107 (SC)], their Lordships of the Supreme Court has dismissed, by an order dated 17-3-1986, a special leave petition by the Department against an *interim* order dated 3-10-1985 of the Delhi High Court in C.M. No. 1805 of 1985 in C.W. No. 1219 of 1985 whereby the High Court confirmed, after notice to the Department, the *interim* stay of prosecution proceedings initiated by the Director of Inspection before the Chief Metropolitan Magistrate under the Indian Penal Code and under section 276C of the Income-tax Act, 1961, pending disposal of the writ petition filed by the assessee challenging the order of the CIT dismissing a petition under section 273A(4) for waiver of penalty.

But, in *Ashvin Kumar Vadilal Patel v S. Rajguru* [(1987) 165 ITR 583 (Guj)], it has been held that the mere fact of filing an application under section 245H for granting immunity to the petitioner does not confer jurisdiction on the criminal court to stay the criminal proceedings pending before it. Also see, *Harbans Singh v Union of India*, (1987) 34 Taxman 495 (Punj).”.

Page 5086: section 279:

On the subject “*Mens rea is essential ingredient of a criminal offence unless excluded by the statute*”, reference may also be made to *Rishikesh Balkishandas v ITO*, (1987) 167 ITR 49, 58 (Del).

Page 5086: section 279:

Before line 3 from bottom, add,—

“But section 278E raises a presumption as to culpable mental state.— Section 278E, newly inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986) with effect from 10th September, 1986, makes provisions raising a presumption as to culpable mental state.”.

Page 5088: section 279:

In line 7 from top, after “79 ITR 72, 79 (Ker)”, add,— “ ; *Jagannath*

Prasad Jhalani v Regional Provident Fund Commissioner, (1987) 168 ITR 341, 355 (Del)" [on the point of continuing offence].

Page 5093: section 279:

After line 3 from top, *add*,—

"Giving false statements.—In *R. R. Gavit v Smt. Sherbanoo Hasan Daya* [(1986) 161 ITR 793 (Bom), special leave petition dismissed by the Supreme Court: (1987) 166 ITR (St.) 111 (SC)], a statement of the accused-respondent was alleged to be recorded on oath under section 132(4) during a search conducted under section 132. A complaint was filed before the Magistrate for offences under sections 181 and 193 of the IPC committed by the accused-respondent by giving false statement about bank lockers. The Magistrate refused to issue process and dismissed the complaint. In a criminal revision application filed by the petitioner, it was held that power to interrogate on oath under section 132(4) was limited to seeking explanation regarding articles or documents found in the possession of the person concerned. There is no authority under that section 132(4) to put questions in general. The statement in the instant case was recorded before the search commenced and the power under section 132(4) had been misused. Therefore, the impugned statement was not a statement on oath during the search proceedings within the meaning of section 132(4). In that view of the matter, the revision application was dismissed as no *prima facie* case was made out against the accused.

Criminal breach of trust.—Section 405 of the Indian Penal Code defines a criminal breach of trust and section 406 of that Code prescribes the punishment therefor. The essential ingredients of that section 405 are—

- '(1) The accused must have been entrusted with property or with any dominion over property;
- (2) (a) The accused must have misappropriated that property or converted it to its own use; or (b) used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged; or (c) used or disposed of the property in violation of any legal contract (express or implied) which he has made touching on the discharge of such trust; or (d) wilfully suffered any other person so to do.
- (3) Such misappropriation or user or disposal must be dishonest or such sufferance must be wilful.'

In the absence of proof of entrustment of property or dominion over the property of another, this section will not apply. Similarly, in the absence of the proof of the dishonest intention, the rigour of this section will not be attracted.

In *Surinder Arora v Durga Das* [(1987) 168 ITR 562 (Del)], a complaint was filed in the court of the Magistrate for initiation of proceedings under sections 406 and 418 of the IPC against the managing director and others of a company, *inter alia*, for non-deposit of the funds of the approved

gratuity fund as required under the law. It was held that the gratuity becomes payable only on retirement, death, etc. No employee has any right or interest in any account or fund whatsoever, even if created. There being no entrustment nor there is any evidence of the conversion of the fund by the company for its own use or towards other purpose, the provisions of section 406 are not attracted. Therefore, the dismissal of the complaint by the lower court was justified.”.

Page 5094: section 279:

Before line 13 from bottom, *add*,—

“Framing of charge.—Even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of a charge against the accused in respect of the commission of that offence [see, *Superintendent & Remembrancer of Legal Affairs v Anil Kumar Bhunja*, AIR 1980 SC 52, 55].

In *ITO v Jagdish Ram Manak Chand* [(1987) 167 ITR 8 (Punj)], a complaint was filed by the Income-tax Officer against the respondents (accused) for offences under sections 276C and 277 for having filed return for the assessment year 1979-80 on the basis of wrong and false statement of accounts with a view to evade tax. The lower court discharged the respondents on the ground that it had not been proved that the return of the statement of accounts filed by the respondents was false. It was held that the conclusion of the lower court was wholly untenable particularly keeping in view the stage of framing the charge. The admission of one of the accused that the sales reflected in the *udhar bahis* were not reflected in the regular books of account was enough for framing the charge against the accused who filed the return. Therefore, the order of the lower court was set aside and the matter was remanded for decision afresh in accordance with law.

Dismissal of complaint, in a summons case, for non-appearance results in acquittal—no review possible.—The procedure for a summons case is different from that for a warrant case, inasmuch as a summons case deals with minor offences where punishment does not go beyond two years of imprisonment, whereas a warrant case relates to more serious offences where punishment goes beyond the period of two years. In a summons case, if the complainant is absent, the provision gives a mandate to the Magistrate to acquit the accused, unless for some reason, he thinks it proper to adjourn the hearing of the case to another date. This mandate is contrary to the provision under section 249 relating to the absence of a complainant in a warrant case. A plain reading of section 256 of the Criminal Procedure Code, 1973, shows that the Magistrate has only two alternatives before him in the event of the absence of the complainant. He shall acquit the accused or he may adjourn the hearing. Once he elects the first option, he has to acquit the accused and acquitting the accused is a final order. Such

an order cannot be reviewed as per the bar imposed by section 362 of the Criminal Procedure Code, 1973 [*Shah Jagannath Shivilal v ITO*, (1987) 165 ITR 245 (Bom)].”.

Pages 5095-5097: section 279:

On the subject “*When the High Court can interfere at an interlocutory stage by virtue of its inherent power*”, reference may also be made to—

(1) *Nemi Chand Garg v ITO*, (1986) 161 ITR 500, 503-4 (Raj) [Normally, in economic offences, the provisions of section 482, Criminal Procedure Code, 1973, should not be invoked and when prosecutions are launched, they should be allowed to take their course because the assessee has every right to defend. However, the High Court cannot remain a silent spectator if it finds that there is going to be avoidable harassment, humiliation and torture to a citizen without there being any foundation].

(2) *R. R. Gavit v Smt. Sherbanoo Hasan Daya*, (1986) 161 ITR 793 (Bom), special leave petition dismissed by the Supreme Court: (1987) 166 ITR (St.) 111 (SC) [The High Court would not interfere with the order dismissing the complaint if no *prima facie* case is made out against the accused].

(3) *Tilak Raj v ITO*, (1987) 165 ITR 46 (Punj) [Before invoking the inherent power of the High Court under section 482 of the present Code, the petitioner has to show some abuse of the process of court or a case of gross injustice which was apparent from the record. The High Court cannot assume the role of a magistrate. In this case, the High Court dismissed the petition filed by the petitioner under section 482 of the present Code for quashing the complaint and charge framed for offence under section 278 on the ground that there was no material for framing the charge].

(4) *General Sales Pr. Ltd. v Gopal Mukherjee, ITO*, (1987) 166 ITR 77 (Del), affirmed in *General Sales Pr. Ltd. v Gopal Mukherjee, ITO*, (1987) 166 ITR 87 (SC) subject to the observations that the comments of the High Court on merits would not influence the trial court [Where, on the basis of a complaint making out a *prima facie* case, the trial court takes cognizance of the alleged offence(s), say, under sections 276C and 277, the High Court, in exercise of its power under section 482 of the present code, should not interfere with the complaint at that stage]. Also see, *J. P. Sharma v Vinod Kumar Jain*, AIR 1986 SC 833; *Shankar Bhandar v CIT*, (1987) 166 ITR 812 (Pat).

(5) *G. Viswanathan v ITO*, (1987) 167 ITR 103 (Ker) [Whether the offence was actually committed or not is not a matter for consideration in a proceeding under section 482 of the present Code to quash the complaint. That is a matter for evidence during the trial by the Magistrate].

(6) *Sharda Prasad Sinha v State of Bihar*, AIR 1977 SC 1754 [It is, now, settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court

exercising its inherent jurisdiction under section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence].

(7) *Municipal Corporation of Delhi v Ram Kishan Rohtagi*, AIR 1983 SC 67, 70 [It is manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under section 482 of the present Code].

Page 5098: section 279:

At the end of the page, *add*,—

“Writ.—Where a criminal complaint has been filed against a person, he will have a right to point out to the magistrate that he had not committed any offence. Such a criminal complaint cannot, ordinarily, be quashed in writ proceedings [*Shiv Shanker Sitaram v ITAT*, (1987) 168 ITR 275 (All)].”.

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Page 5126: section 280D:

In line 2 from top, after “135 ITR 393 (Karn)”, *add*,— “ ; *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 787 (Karn); *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 791 (Karn); *Jayakumari and Dilharkumari v CIT*, (1987) 165 ITR 792 (Karn)” [holding that the refund of annuity deposit received by an executor to the estate of the deceased depositor was income assessable in the hands of the executor].

Page 5175: section 280ZA (now omitted):

After the text of section 280ZA, *add*,—

“Section 280ZA, now omitted.—Section 280ZA has now been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988. The omission is consequential to the insertion, by that Act, of section 54G.”.

Page 5178: section 280ZB:

After the text of section 280ZB, *add*,—

“Legislative amendment.—By the Finance Act, 1987 (11 of 1987), clause (a) of *Explanation 2* to section 280ZB has been omitted, with effect from 1st April, 1988. The omission is consequential to the omission, by that Act, of section 104.”.

Page 5198: section 280ZC:

After line 9 from top, *add*,—

“Writ.—In *Okayti Tea Co. Ltd. v ITO* [(1986) 160 ITR 487 (Cal)], the Tribunal refused to consider a new ground raised before it for the first time about the entitlement of the assessee to the allowances under sections 35C and 280ZC. On a writ petition, it was held that the Tribunal was within his jurisdiction in not entertaining the contentions as the same had not been mooted earlier. Moreover, it was open to the appellant to come up by way of reference so that questions arising out of the order of the Tribunal could be properly adjudicated. Therefore, a writ could not be issued.”.

Page 5216: section 281A:

In the last line of the paragraphs titled “*Certified copy of the notice to be supplied*”, after “159 ITR 637 (Cal)].”, *add*,— “Also see, *Pritam Singh v Smt. Narinder Kaur*, (1986) 160 ITR 899 (Del).”

Page 5242: section 285 (now omitted):

After the paragraph titled “1922 Act”, *add*,—

“Section 285, now omitted.—Section 285 has now been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987. The omission is consequential to the substitution, by that Act, of section 206.”

Page 5250: section 286 (now omitted):

After the paragraph titled “1922 Act”, *add*,—

“Section 286, now omitted.—Section 286 has now been omitted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987. The omission is consequential to the substitution, by that Act, of section 206.”

Pages 5264-5265: section 288:

At the end of the paragraphs titled “*Disciplinary action against a practitioner*”, *add*,—

“In *K. Navaneethari v CIT* [(1986) 54 CTR (Mad) 383], the Madras High Court dismissed a writ petition challenging the show-cause notice issued to an income-tax practitioner as the petitioner can urge all the contentions before the ‘prescribed authority’ concerned.

In the context of disciplinary action against a chartered accountant under the provisions of the Chartered Accountants Act, 1949, read with the Chartered Accountants Regulations, 1964, it has been held by the Supreme Court, in *Institute of Chartered Accountants of India v L. K. Ratan* [(1987) 164 ITR 1 (SC)], that the Council of the Institute of Chartered Accountants of India has to give an opportunity of being heard to the member concerned and is obliged to give reasons for its finding that the member is guilty of misconduct.”.

Page 5282: section 292A:

At the end of line 6 from top, *add*,— “Section 292A does not recognise any other exception, such as, old age of the accused [*ITO v Aggarwal Iron Store*, (1987) 166 ITR 289 (Punj)].”

Page 5284: section 292B:

At the end of the paragraph titled “*Section 292B cannot cover a case of non-service*”, *add*,—

“Where a notice under section 148 has not been served on the proper person, the assessment made in pursuance of such notice is illegal and without jurisdiction. Such a fundamental infirmity cannot be called a ‘mere irregularity’ which can be cured by relying on section 292B [*P. N. Sasikumar v CIT*, (1987) Tax LR 1056, 1059 (Ker)].”.

Page 5284: section 293:

At the end of the paragraph titled “*Legislative amendment*”, *add*,—

“The word ‘assessment’ has been omitted from section 293 with retrospective effect from 1st March, 1987, by the Finance Act, 1987 (11 of 1987). As a result of the amendment, the bar of section 293 has also been extended to any suit in any civil court to set aside or modify any order, other than an assessment order, with effect from 1st March, 1987.

The scope and effect of the above amendment have also been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘Bar of suits in civil courts to set aside or modify any order passed.—

42.1 Under the existing provisions of section 293, no suit can be brought in any Civil Court to set aside or modify any assessment order made under the Income-tax Act and no prosecution, suit or other proceedings shall lie against the Government or any officer of the Government for anything done in good faith or intended to be done under the Act.

Similar provisions are contained in section 43 of the Wealth-tax Act, 1957, and section 42 of the Gift-tax Act, 1958. These provisions have been interpreted to mean that the bar of suits in Civil Courts is confined to assessment orders only and not to other orders under the Income-tax, Wealth-tax and Gift-tax Acts.

42.2 Direct Tax laws contain very detailed provisions relating to appeals against orders passed by various authorities. They are self-contained codes. It is, therefore, not appropriate for Civil Courts to assume jurisdiction in respect of order made under the Act. Section 293 of the Income-tax Act and the corresponding provisions of the Wealth-tax Act and the Gift-tax Act have been amended to provide that no suit shall be brought in any Civil Court to set aside or modify any order made under the said Acts.

42.3 These amendments come into force with effect from 1st March, 1987.”.

Page 5288: section 293:

Before line 15 from bottom, *add*,—

"In *ITO v Shanti Parshad Jain* [(1987) 167 ITR 238 (Punj)] it has been held that in view of the bar of section 293 the civil court had no jurisdiction to go into the legality or validity of the action of the Income-tax Officer in issuing the notices for filing the returns."

Page 5297: section 293A:

Before the text of section 294, *add*,—

"The following notification has also been issued under section 293A making reduction in rate in respect of income-tax—

'Whereas the Central Government is satisfied that it is necessary and expedient so to do in the public interest to make reduction in rate in respect of income-tax in favour of any person, being a foreign company, or a person (other than a company) who is non-resident, with whom the Central Government has entered into an agreement for the association or participation of that Government or any person authorised by that Government in any business consisting of the prospecting for or extraction or production of mineral oils.

Now, therefore, in exercise of the powers conferred by section 293A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby provides that—

- (a) where the total income of any such person consists only of profits and gains derived from such business, the tax payable by such person on his total income shall be the amount of income-tax calculated on such total income at the rate of fifty per cent. of such income;
- (b) where the total income of such person includes such profits and gains, the tax payable by him on his total income shall be—
 - (i) the aggregate of the income-tax payable by him in accordance with the provisions of clause (a) on the profits and gains referred to in that clause included in the total income, *plus*
 - (ii) the amount of income-tax calculated on the amount of total income as reduced by the amount of profits and gains referred to in clause (a), at the average rate of income-tax which would have been applicable to the total income, if the provision of the said clause had not applied.

Explanation.—For the purposes of this notification,—

- (a) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income by such total income;
- (b) "foreign company" shall have the meaning assigned to it in clause (4) of section 80B of the Income-tax Act, 1961 (43 of 1961);

(c) "mineral oil" includes petroleum and natural gas.'
[Notification No. GSR 645(E), dated 6th July, 1987.]".

Page 5299: section 294A:

In line 12 from bottom, for 157 ITR 39 (Bom)", read "151 ITR 39 (Bom)".

Page 5306: section 295:

Before line 9 from bottom, *add*,—

"Legislation by incorporation.—Legislation by incorporation of provisions of another statute even though passed by a different legislature is a well-known method of legislation which does not affect the validity of the legislation particularly when the scheme of the other statute is similar and such incorporation is relevant and necessary for the purpose of advancing the objects and purposes of the legislation [*Shiv Dutt Rai Fateh Chand v Union of India*, (1984) 148 ITR 664, 681 (SC)]. In that case, it has been held that section 9(2A) of the Central Sales Tax Act, 1956 (74 of 1956), does not suffer from the vice of excessive delegation merely because the provisions relating to penalties in general sales tax laws of the States are adopted for the purposes of that Act."

Pages 5324-5325: section 295:

On the subject "*Statutory force of the rules*", reference may also be made to *Ram Autar Santosh Kumar v State of Bihar*, AIR 1987 Pat 13, 17.

Page 5340: section 297:

Before line 7 from bottom, *add*,—

"Ordinance ceasing to operate—not to affect assessments relating to period during which the Ordinance was in force.—Even though an Ordinance ceases to operate at the expiration of six weeks from the reassembly of Parliament if it is not laid before Parliament as per sub-clause (a) of clause (2) of article 123 of the Constitution, or before that period if a resolution disapproving it is passed by both Houses of Parliament, nevertheless such lapse does not affect the initial validity of the Ordinance. Therefore, assessments in accordance with the provisions of the Ordinance relating to the period during which the Ordinance was in force are legal and valid, irrespective of the fact whether such assessments are completed during the period when the Ordinance was in force or subsequent to its lapse [Cf. *T. M. Mohan v Addl. AgITO*, (1987) 168 ITR 384 (Karn); *A. Malle Gowda v AgITO*, (1987) 168 ITR 381 (Karn)].

Doctrine of incorporation by reference.—This has been succinctly explained by Lord Esher M. R., in *In re: Wood's Estate* [(1886) 31 Ch. D. 607] in the following words:—

'It is to put them into the Act of 1855, just as if they had been written into it for the first time. If a subsequent Act brings into itself by reference

some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.'

The Supreme Court has also explained the doctrine of incorporation by reference in similar terms in *Shamrao v District Magistrate* [AIR 1952 SC 324, 326], where it is observed:

'The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England: see *Craies on Statute Law*, 5th Edition, page 207; it is the law in America: see *Crawford on Statutory Construction*, page 110; and it is the law which the Privy Council applied to India in *Keshoram Poddar v Nandlal Mallick*: AIR 1927 PC 97.'

The above doctrine of incorporation by reference has been applied by the Supreme Court in *Onkarlal Nandlal v State of Rajasthan* [AIR 1986 SC 2146, 2152] and the Supreme Court has held that *Explanation II* to section 2(o) of the Rajasthan Sales Tax Act, 1954 (29 of 1954), must be interpreted as if section 4(2) of the Central Sales Tax Act, 1956 (74 of 1956), were written out in that *Explanation* and once section 4(2) is written out in the *Explanation*, there is no occasion or need to refer to Act 74 of 1956 from which this incorporation is made or to its purpose or context.

Also see, '*Legislation by incorporation*', at page 6742, *ante*."

Page 5343: section 297(2)(a):

Lines 15-16 from top: The decision in *Imperial Chemical Industries v CIT* [(1979) 116 ITR 516 (Cal)] has been followed in *CIT v Shell Petroleum Co. Ltd.* [(1987) 164 ITR 346 (Cal)] and in *CIT v Turner Morrison & Co. Ltd.* [(1987) 166 ITR 57 (Cal)].

Page 5344: section 297(2)(a):

At the end of line 16 from top, *add*,— "The decision in *Imperial Chemical Industries v CIT* [(1979) 116 ITR 516 (Cal)] has been followed in *CIT v Shell Petroleum Co. Ltd.* [(1987) 164 ITR 346 (Cal)]. and in *CIT v Turner Morrison & Co. Ltd.* [(1987) 166 ITR 57 (Cal)]."

Page 5346: section 297(2)(c):

At the end of line 13 from top, *add*,— "A claim for interest made by the assessee cannot be said to be a proceeding by way of appeal, reference or revision within the meaning of section 297(2)(c) [*CIT v Bombay Burmah Trading Corporation Ltd.*, (1987) 165 ITR 460, 465 (Bom)]."

Page 5348: section 297(2)(d):

In line 11 from top, after “160 ITR 275 (Pat)”, *add*,— “ ; *Addl. CIT v Hasmat Rai Raj Pal*, (1987) 167 ITR 794 (All)” [holding that in cases covered by section 297(2)(d)(ii), the provisions of section 68 of the 1961 Act cannot be invoked].

Page 5354: section 297(2)(i):

After the paragraphs titled “*Refunds—section 297(2)(i)*”, *add*,—

“But where the assessment order was passed before 1st April, 1962, but the refund became due consequent upon the decision of the High Court rendered after that date, the provisions of section 297(2)(i) are attracted [*CIT v Bombay Burmah Trading Corporation Ltd.*, (1987) 165 ITR 460 (Bom)].”.

Page 5355: section 297(2)(j):

After line 9 from top, *add*,—

“The words ‘without prejudice to any action already taken for the recovery of such sum under the repealed act’ appearing in clause (j) of section 297(2) do not indicate that action ought to have been taken under the 1922 Act. Those words are only intended to protect recovery proceedings already taken under the repealed Act and not to make such a proceeding a condition precedent to invoke the power under the 1961 Act. Recovery under the 1961 Act will be without prejudice to whatever action in that behalf had already been taken under the 1922 Act. Any other construction would lead to absurdity, for it would then mean that there would be no statute under which recovery is possible even though an assessment has been validly made under the repealed Act [*CIT v Ettumanoor Motors (Pr) Ltd.*, (1987) 165 ITR 751, 754 (Ker)].”.

Page 5357: section 297(2)(k):

At the end of line 13 from bottom, *add*,— “But in the facts of *Krishi Utpanna Bazar Samiti v ITO* [(1986) 158 ITR 742, 749 (Bom)], the circular issued under the 1922 Act provisions was held not inconsistent with the 1961 Act and, therefore, binding under the 1961 Act.”.

Page 5399: Schedule IV, Part B:

In the heading at the beginning of Part B of Schedule IV, for the figures and brackets “206(2)”, the figures “206” have been substituted by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.

Page 5401: Schedule IV: Part B:

The words, brackets and figure “sub-section (1) of” have been omitted from rule 7 of Part B of Schedule IV by the Finance Act, 1987 (11 of 1987), with effect from 1st June, 1987.

Pages 5414-5415: Schedule XI:

The Eleventh Schedule has been amended by the Finance Act, 1987 (11 of 1987), with effect from 1st April, 1988, as under:—

‘(a) in item 5, the following *Explanation* has been inserted at the end, namely:—

‘*Explanation.*—“Blended flavouring concentrates” shall include, and shall be deemed always to have included, synthetic essences in any form.’;

(b) in item 22, in the *Explanation*, for the words “, for data processing and for transmission and reception of messages”, the words, brackets, figures and letters “and for data processing (not being computers within the meaning of section 32AB)” have been substituted.’.

The scope and effect of the above amendments have been elaborated in the following portion of the departmental circular No. 495, dated 22nd September, 1987, as under:—

‘*Amendment of the Eleventh Schedule to the Income-tax Act, 1961.—43.1* The Eleventh Schedule of the Income-tax Act lists non-priority products. The manufacturers of these products are denied tax concessions under section 32AB and other sections of the Act. Item No. 5 of the Eleventh Schedule relates to “aerated waters” in the manufacture of which “blended flavouring concentrates in any form are used”. This has been found that certain persons manufacturing aerated waters are using synthetic essence and are claiming the benefit on the ground that synthetic essence cannot be included in the expression “blended flavouring concentrates in any form”. As this was not the intention of the legislature the Finance Act, 1987, has inserted an *Explanation* to Item 5 of the Eleventh Schedule which clarifies that blended flavouring concentrates would include the synthetic essences in any form.

43.2 Item No. 22 of the Eleventh Schedule has been amended to exclude computers from the list of non-priority items. Office machines and apparatus used for transmission and reception of messages have also been excluded from the non-priority list of articles or things as contained in this item of the Eleventh Schedule.

43.3 This amendment will come into force from 1-4-1988 and will, accordingly, apply in relation to assessment year 1988-89 and subsequent years.’.

Page 5427: IT Rules, 1962:

After serial No. 165, *add*,—

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|--|----|--------------------------|
| 166. The Income-tax (Ninth Amendment) Rules, 1986 [SO 702(E), dated 1-10-1986] | .. | (1986) 162 ITR (St.) 53 |
| 167. The Income-tax (Tenth Amendment) Rules, 1986 [SO 896(E), dated 3-12-1986] (w.e.f. 1-4-1987) | | (1987) 165 ITR (St.) 179 |

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|--|----|------------------------------|
| 168. The Income-tax (Eleventh Amendment) Rules, 1986 [SO 912(E), dated 12-12-1986] | .. | (1987) 165 ITR (St.) 181 |
| 169. The Income-tax (Amendment) Rules, 1987 [SO 4(E), dated 2-1-1987] | .. | (1987) 165 ITR (St.) 241 |
| 170. The Income-tax (Second Amendment) Rules, 1987 [SO 166(E), dated 9-3-1987] (w.e.f. 1-4-1987) | | (1987) 165 ITR (St.) 309 |
| 171. The Income-tax (Third Amendment) Rules, 1987 [SO 276(E), dated 1-4-1987] (w.e.f. 2-4-1987) | | (1987) 165 ITR (St.) 345 |
| 172. The Income-tax (Fourth Amendment) Rules, 1987 [SO 684(E), dated 8-7-1987] (w.e.f. 1-4-1987) | | (1987) 166 ITR (St.) 149-150 |
| 173. The Income-tax (Fifth Amendment) Rules, 1987 [SO 769(E), dated 12-8-1987] | .. | (1987) 167 ITR (St.) 75 |
| 174. The Income-tax (Sixth Amendment) Rules, 1987 [SO 781(E), dated 17-8-1987] (w.e.f. 2-4-1987) | | (1987) 167 ITR (St.) 77 |
| 175. The Income-tax (Seventh Amendment) Rules, 1987 [SO 894(E), dated 8-10-1987] | .. | (1987) 168 ITR (St.) 156 |
| 176. The Income-tax (Eighth Amendment) Rules, 1987 [SO 963(E), dated 29-10-1987] | .. | (1987) 168 ITR (St.) 156 |

Pages 5438-5439: rule 5:

For rule 5 of the Income-tax Rules, 1962, the following rule 5 has been substituted by the Income-tax (Third Amendment) Rules, 1987 [Notification No. SO 276(E), dated 1st April, 1987], with effect from 2nd April, 1987, as under:—

‘5. Depreciation.—(1) Subject to the provisions of sub-rule (2), the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year.

(2) Where any new machinery or plant is installed during the previous year relevant to the assessment year commencing on or after the 1st day of April, 1988, for the purposes of business of manufacture or production of any article or thing and such article or thing—

- (a) is manufactured or produced by using any technology (including any process) or other know-how developed in, or
- (b) is an article or thing invented in,

a laboratory owned or financed by the Government or a laboratory owned by a public sector company or a University or an institution recognised in this behalf by the Secretary, Department of Scientific and Industrial Research, Government of India, such plant or machinery shall be treated as a part of block of assets qualifying for depreciation at the rate of 50 per cent. of written down value, if the following conditions are fulfilled, namely:—

- (i) the right to use such technology (including any process) or other know-how or to manufacture or produce such article or thing has been acquired from the owner of such laboratory or any person deriving title from such owner;
- (ii) the return furnished by the assessee for his income, or the income of any other person in respect of which he is assessable, for any previous year in which the said machinery or plant is acquired, shall be accompanied by a certificate from the Secretary, Department of Scientific and Industrial Research, Government of India, to the effect that such article or thing is manufactured or produced by using such technology (including any process) or other know-how developed in such laboratory or is an article or thing invented in such laboratory; and
- (iii) the machinery or plant is not used for the purpose of business of manufacture or production of any article or thing specified in the list in the Eleventh Schedule to the Act.

Explanation.—For the purposes of this sub-rule,—

- (a) “laboratory financed by the Government” means a laboratory owned by any body [including a society registered under the Societies Registration Act, 1860 (21 of 1860)], and financed wholly or mainly by the Government;
- (b) “public sector company” means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); and
- (c) “University” means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act.’

Pages 5440-5441: rule 5AA (now omitted):

Rule 5AA of the Income-tax Rules, 1962, has been omitted, with effect from 2nd April, 1987, by the Income-tax (Third Amendment) Rules, 1987 [Notification No. SO 276(E), dated 1st April, 1987].

Page 5476: rule 18BBA:

For rule 18BBA of the Income-tax Rules, 1962, the following rule 18BBA has been substituted by the Income-tax (Tenth Amendment) Rules, 1986

[Notification No. SO 896(E), dated 3rd December, 1986], with effect from 1st April, 1987, as under:—

'18BBA. Form of reports for claiming deduction under section 80HHB or under section 80HHC.—(1) The report of the audit of the accounts of an assessee, other than a company or a co-operative society, which is required to be furnished under clause (i) of sub-section (3) of section 80HHB shall be in Form No. 10CCA.

(2) The report of an accountant which is required to be furnished by the assessee under sub-section (4) of section 80HHC shall be in Form No. 10CCAB.'.

Page 5484: new rule 21AA:

After rule 21A, *add*,—

'The following rule 21AA has been inserted by the Income-tax (Eighth Amendment) Rules, 1987 [Notification No. SO 963(E), dated 29th October, 1987], namely:—

"21AA. Furnishing of particulars for claiming relief under section 89(1).—Where the assessee, being a Government servant or an employee in a public sector undertaking, is entitled to relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1) of section 192, the particulars specified in Form No. 10E."'. .

Page 5488: new rules 26A and 26B:

After rule 26, *add*,—

"The following rules 26A and 26B have been inserted by the Income-tax (Eighth Amendment) Rules, 1987 [Notification No. SO 963(E), dated 28th October, 1987], namely:—

'26A. Furnishing of particulars of income under the head "Salaries" received from other employer(s) for deduction of tax at source.—The assessee may furnish to the person responsible for making the payment referred to in sub-section (1) of section 192, the details of the income under the head "Salaries" due or received by him from the other employer or employers referred to in sub-section (2) of that section and of any tax deducted at source from such income in Form No. 12B.

26B. Furnishing of particulars of income under heads of income other than "Salaries" for deduction of tax at source.—The assessee may send to the person responsible for making the payment referred to in sub-section (1) of section 192, the particulars of any income chargeable under any head of income other than "Salaries" (not being a loss under any such head), received by the assessee for the same financial year, and of any tax deducted on such income in Form No. 12C.'".

Page 5511/xxxvi of Vol. 6: rule 48L:

The date 16th day of October, 1986, referred to in rule 48L(2)(a) has

been extended till 15th day of November, 1986, *vide*, the departmental circular No. 475, dated 9th December, 1986 [(1987) 164 ITR (St.) 2].

The said rule 48L(2) has been substituted by a new rule 48L(2) by the Income-tax (Seventh Amendment) Rules, 1987 [Notification No. SO 894(E), dated 8th October, 1987], which reads as under:—

“(2) The statement in Form No. 37-I shall be furnished, in duplicate, to the appropriate authority—

- (a) before the 30th day of October, 1987, in a case where the agreement for transfer is entered into before the coming into force of Chapter XXC in the areas comprised in the ‘Bangalore Metropolitan Region’, and ‘Ahmedabad Urban Development Area’ and the areas comprised in the city of Ahmedabad, as referred to in the notification of the Government of India in the Department of Revenue No. SO 835(E), dated 21-9-1987;
- (b) before the expiry of 15 days from the date on which the provisions of Chapter XXC come into force in any areas, other than the areas referred to in clause (a), where the agreement for transfer is entered into before such date; and
- (c) before the expiry of 15 days from the date on which the agreement for transfer is entered into, in cases not covered by clauses (a) and (b).”.

Page 5512: rule 50:

In rule 50 of the Income-tax Rules, 1962, after clause (3), the following clause (4) has been inserted by the Income-tax (Eleventh Amendment) Rules, 1986 [Notification No. SO 912(E), dated 12th December, 1986], namely:—

“(4) The Departmental Examinations conducted by or on behalf of the Central Board of Direct Taxes for Income-tax Officers, Class I or Group ‘A’ Probationers, or for Income-tax Officers, Class II or Group ‘B’ Probationers, or for promotion to the post of Income-tax Officers, Class II or Group ‘B’, as the case may be.”.

Pages 5534-5535: rule 101:

Rule 101 of the Income-tax Rules, 1962, was amended by the Income-tax (Second Amendment) Rules, 1987 [Notification No. SO 166(E), dated 9th March, 1987], with effect from 1st April, 1987. Such amendment was done away with by a subsequent amendment of rule 101 by the Income-tax (Fourth Amendment) Rules, 1987 [Notification No. SO 684(E), dated 8th July, 1987], with effect from 1st April, 1987. Thus, in effect, there was no real amendment of rule 101.

Page 5546: rule 114A:

Before the text of rule 115, the following rule 114A, which has been inserted by the Income-tax (Fifth Amendment) Rules, 1987 [Notification No. SO 769(E), dated 12th August, 1987], namely:—

"114A. Application for allotment of a tax deduction account number.—

(1) An application under sub-section (1) of section 203A for the allotment of a tax deduction account number shall be made in duplicate in Form No. 49B.

(2) An application referred to in sub-rule (1) shall be made,—

(i) in cases, where the function of allotment of tax deduction account number under section 203A has been assigned by the Commissioner to any particular Income-tax Officer, to that Income-tax Officer;

(ii) in any other case, to the Income-tax Officer having jurisdiction to assess the applicant.

(3) The application referred to in sub-rule (1) shall be made,—

(i) in a case, where a person has deducted tax in accordance with the provisions of Chapter XVII under the heading 'B.—Deduction at source' prior to the 1st day of June, 1987, on or before the 30th day of September, 1987;

(ii) in a case, where a person has deducted or deducts tax in accordance with the provisions of Chapter XVII under the heading 'B.—Deduction at source' on or after the 1st day of June, 1987, within one month from the end of the month in which the tax was deducted or the 30th day of September, 1987, whichever is later."

Pages 5551-5561: Appendix I:

For Appendix I [consisting of Part I and Part II] to the Income-tax Rules, 1962, the following Appendix I has been substituted by the Income-tax (Third Amendment) Rules, 1987 [Notification No. SO 276(E), dated 1st April, 1987], with effect from 2nd April, 1987, namely:—

'APPENDIX I

[See rule 5]

**TABLE OF RATES AT WHICH DEPRECIATION IS
ADMISSIBLE**

| <i>Block of assets</i> | <i>Depreciation allowance as percentage of written down value</i> |
|------------------------|---|
| 1 | 2 |

I. BUILDINGS [See Notes 1 to 3 below the Table]

- (1) Buildings other than those covered by sub-item (3) below which are used mainly for residential purposes 5
- (2) Buildings which are not used mainly for residential purposes and which are not covered by sub-item (3) below 10

| 1 | 2 |
|--|-------|
| (3) (i) Buildings used as hotels | 20 |
| (ii) Buildings with dwelling units each with plinth area not exceeding 80 square metres | 20 |
| (4) Purely temporary erections such as wooden structures | 100 |
| II. FURNITURE AND FITTINGS | |
| (1) Rate applicable to furniture and fittings not covered by sub-item (2) below | 10 |
| (2) Furniture and fittings used in hotels, restaurants and boarding houses; schools, colleges and other educational institutions; libraries, welfare centres; meeting halls; cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions | 15 |
| III. MACHINERY AND PLANT | |
| (1) Machinery and plant other than those covered by sub-items (2) and (3) below | 33.33 |
| (2) (i) Aeroplanes, Aero-engines | 50 |
| (ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire | |
| (iii) Moulds used in rubber and plastic goods factories | |
| (iv) Air pollution control equipments, being— | 50 |
| (a) Electrostatic precipitation systems | |
| (b) Felt-filter systems | |
| (c) Dust collector systems | |
| (d) Scrubber—counter current/venturi/packedbed/cyclonic scrubbers | |
| (v) Water pollution control equipments, being— | 50 |
| (a) Mechanical screen systems | |
| (b) Aerated detritus chambers (including air compressor) | |
| (c) Mechanically skimmed oil and grease removal systems | |
| (d) Chemical feed systems and flash mixing equipment | |
| (e) Mechanical flocculators and mechanical reactors | |
| (f) Diffused air/mechanically aerated activated sludge systems | |
| (g) Aerated lagoon systems | |
| (h) Biofilters | |
| (i) Methane—recovery anaerobic digester systems | |
| (j) Air floatation systems | |
| (k) Air/steam stripping systems | |
| (l) Urea hydrolysis systems | |
| (m) Marine outfall systems | |
| (n) Centrifuge for dewatering sludge | |
| (o) Rotating biological contractor or bio-disc | |
| (p) Ion exchange resin column | |
| (q) Activated carbon column | |
| (vi) Solid waste control equipments, being—caustic/lime/chrome/mineral/cryolite recovery system | 50 |
| (3) (i) Wooden parts used in artificial silk manufacturing machinery | 100 |
| (ii) Cinematograph films—bulbs of studio lights | 100 |

(iii) Energy saving devices, being—

A. *Specialised boilers and furnaces:*

- (a) Ignifluid/fluidized bed boilers
- (b) Flameless furnaces and continuous pusher type furnaces
- (c) Fluidized bed type heat treatment furnaces
- (d) High efficiency boilers (thermal efficiency higher than 75 per cent. in case of coal fired and 80 per cent. in case of oil/gas fired boilers)

100

B. *Instrumentation and monitoring system for monitoring energy flows:*

- (a) Automatic electrical load monitoring systems
- (b) Digital heat loss meters
- (c) Micro-processor-based control systems
- (d) Infra red thermography
- (e) Meters for measuring heat losses, furnace oil flow, steam flow, electric energy and power factor meters
- (f) Maximum demand indicator and clamp on power meters
- (g) Exhaust gases analyser
- (h) Fuel oil pump test bench

100

C. *Waste heat recovery equipments:*

- (a) Economisers and feed water heaters
- (b) Recuperators and air pre-heaters
- (c) Heat pumps
- (d) Thermal energy wheel for high and low temperature waste heat recovery

100

D. *Co-generation systems:*

- (a) Back pressure pass out, controlled extraction, extraction-cum-condensing turbines for cogeneration alongwith pressure boilers
- (b) Vapour absorption refrigeration systems
- (c) Organic rankine cycle power systems
- (d) Low inlet pressure small steam turbines

100

E. *Electrical equipments:*

- (a) Shunt capacitors and synchronous condenser systems
- (b) Automatic power cut off devices (relays) mounted on individual motors
- (c) Automatic voltage controller.
- (d) Power factor controller for AC motors
- (e) Solid state devices for controlling motor speeds

100

- ¹[(f) Thermally energy-efficient Stenters (which require 800 or less Kilo calories of heat to evaporate one Kilogram of water)]

1 Subs., for "(f) Stenters", by the Income-tax (Sixth Amendment) Rules, 1987 [Notification No. SO 781(E), dated 17th August, 1987] (w.e.f. 2-4-1987).

| 1 | 2 |
|--|-----|
| F. Burners: | |
| (a) 0 to 10 per cent. excess air burners | 100 |
| (b) Emulsion burners | |
| (c) Burners using air with high pre-heat temperature (above 300°C) | |
| G. Other equipments: | |
| (a) Wet air oxidation equipment for recovery of chemicals and heat | 100 |
| (b) Mechanical vapour recompressors | |
| (c) Thin film evaporators | |
| (d) Automatic micro-processor based load demand controllers | |
| (e) Coal based producer gas plants | |
| (f) Fluid drives and fluid couplings | |
| (g) Turbo charges/super-charges | |
| (iv) Flour mills—Rollers | 100 |
| (v) Gas cylinders including valves and regulators | 100 |
| (vi) Glass manufacturing concerns—Direct fired glass melting furnaces | 100 |
| (vii) Iron and steel industry—Rolling mill rolls | 100 |
| (viii) Match factories—Wooden match frames | 100 |
| (ix) Mineral oil concerns— | |
| (a) Plant used in field operations (above ground) distribution—Returnable packages | 100 |
| (b) Plant used in field operations (below ground), but not including kerbside pumps including underground tanks and fittings used in field operations (distribution) by mineral oil concerns | |
| (x) Mines and quarries— | |
| (a) Tubs winding ropes, haulage ropes and sand stowing pipes | 100 |
| (b) Safety lamps | |
| (xi) Salt works—Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clayey material or any other similar material | 100 |
| (xii) Sugar works—Rollers | 100 |
| (xiii) Renewal energy devices being— | |
| (a) Flat plate solar collectors | 100 |
| (b) Concentrating and pipe type solar collectors | |
| (c) Solar cookers | |
| (d) Solar water heaters and systems | |
| (e) Air/gas/fluid heating systems | |
| (f) Solar crop driers and systems | |
| (g) Solar refrigeration, cold storages and air-conditioning systems | |
| (h) Solar steels and desalination systems | |
| (i) Solar power generating systems | |
| (j) Solar pumps based on solar thermal and solar photovoltaic conversion | |

| 1 | 2 |
|--|-----|
| (k) Solar photovoltaic modules and panels for water pumping and other applications | 100 |
| (l) Wind mills and any specially designed devices which run on wind mills | |
| (m) Any special devices including electric generators and pumps running on wind energy | |
| (n) Biogas plant and biogas engines | |
| (o) Electrically operated vehicles including battery powered or fuel-cell powered vehicles | |
| (p) Agricultural and municipal waste conversion devices producing energy | |
| (q) Equipment for utilising ocean waste and thermal energy | |
| (r) Machinery and plant used in the manufacture of any of the above sub-items | |
| IV. SHIPS | |
| (1) Ocean-going ships including dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes and fishing vessels with wooden hull | 20 |
| (2) Vessels ordinarily operating on inland waters, not covered by sub-item (3) below | 10 |
| (3) Vessels ordinarily operating on inland waters being speed boats [see Note 4 below the Table] | 20 |

Notes:

1. "Buildings" include roads, bridges, culverts, wells and tubewells.
2. A building shall be deemed to be building used mainly for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third per cent. of its total built-up floor area.
3. In respect of any structure or work by way of renovation or improvement in or in relation to a building referred to in *Explanation 1* of clause (ii) of sub-section (1) of section 32, the percentage to be applied will be the percentage specified against sub-item (1), (2) or (3) of item I as may be appropriate to the class of building in or in relation to which the renovation or improvement is effected. Where the structure is constructed or the work is done by way of extension of any such building, the percentage to be applied would be such percentage as would be appropriate, as if the structure or work constituted a separate building.
4. "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour in still water and so designed that when running at a speed it will plane, i.e., its bow will rise from the water.

Page 5563: Forms No. 1, 2, 3 & 3A:

Before the heading "Form No. 3AA", add,—

"By the Income-tax (Amendment) Rules, 1987 [Notification No. SO 4(E), dated 2nd January, 1987: (1987) 165 ITR (St.) 241-294], for the existing Forms No. 1, 2, 3 and 3A, new Forms No. 1, 2, 3 and 3A have been substituted, with effect from 1st April, 1987."

Page 5600: Form No. 10CCA:

In Form No. 10CCA, for the figures and letters "18BBA", the figures, letters and brackets "18BBA(1)" have been substituted by the Income-tax (Tenth Amendment) Rules, 1986 [Notification No. SO 896(E), dated 3rd December, 1986], with effect from 1st April, 1987.

Page 5601: new Form No. 10CCAB:

At the end of the page, *add*,—

"The following Form No. 10CCAB has been inserted by the Income-tax (Tenth Amendment) Rules, 1986 [Notification No. SO 896(E), dated 3rd December, 1986], with effect from 1st April, 1987, namely:—

'FORM NO. 10CCAB

[See Rule 18BBA(2)]

Report under section 80HHC(4) of the Income-tax Act, 1961

*I/We examined the accounts and records of**.....
relating to the busi-
 (Name & address of the assessee (Permanent A/c No)
 ness of export out of India of goods and merchandise carried on by the
 assessee during the year ended on.....

*I/We have obtained all the information and explanations which to the best of *my/our knowledge, and belief were necessary for the purposes of ascertaining the amount of net foreign exchange realisation of the said assessee as determined in accordance with the Import and Export Policy of the Government of India for the aforesaid period. *I/We certify that the deduction to be claimed by the assessee under section 80HHC of the Income-tax Act, 1961, in respect of the assessment year.....is Rs.....which has been worked out on the basis of the details given in the annexure to this Form. In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us the particulars given in the annexure are true and correct.

Date.....

.....
 Signed

†Accountant

Notes:

1. *Delete whichever is not applicable.
2. **Here give name and address.
3. †This report is to be given by:—
 - (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949, (38 of 1949);
 - (ii) any person who, in relation to any State is, by virtue of the provisions in sub-section (2) of section 226 of the Companies Act, 1956, (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State.
4. Where any of the matters stated in this report is answered in the negative or with a qualification the report shall state the reasons therefor.

ANNEXURE

Details relating to the claim for deduction under section 80HHC of the IT Act

Name of the assessee

Previous year ended on

(1) Free on board value of exports out of India of goods or merchandise to which section 80HHC applies forming part of credits to the trading account

(2) The aggregate of the cost, insurance and freight value of all categories of import licences to which assessee was entitled during the previous year to be indicated separately as follows:—

(i) Value of import licences against export obligations.*

(ii) Value of import licences* against exports as replenishments

Total of (i) & (ii)

(3) Net foreign exchange realisation [item (1) *minus* item (2) above]

(4) Amount equivalent to 4% of the net foreign exchange realisation [4% of item (3) above]

(5) The profit derived by the assessee from the export of goods or merchandise to which section 80HHC applies, computed under sub-section (3) of section 80HHC

(6) If the amount shown against item (4) is less than the amount shown in item (5) above, please indicate the difference [item (5) *minus* item (4)]

(7) Amount equal to 50% of the amount shown against item (6) above

(8) Deduction under section 80HHC to which the assessee is entitled [item (4) *plus* item (7)]

(9) Remarks

Page 5603: new Form No. 10E:

After Form No. 10D, *add*,—

“The following Form No. 10E has been inserted by the Income-tax (Eighth Amendment) Rules, 1987 [Notification No. SO 963(E), dated 29th October, 1987], namely:—

Give break-up of licences separately indicating the nature of the licence and its value.

FORM NO. 10E

[See rule 21AA]

**Form for furnishing particulars of income under section 192(2A)
for the year ending 31st March, 19....., for claiming relief
under section 89(1) by a Government servant or an
employee in a public sector undertaking**

1. Name and address of the employee.....
 2. Permanent Account Number.....
 3. Residential status.....
- Particulars of income referred to in rule 21A of the Income-tax Rules, 1962,
during the previous year relevant to assessment year.....

Rs.

1. (a) Salary received in arrears or in advance in accordance with the provisions of sub-rule (2) of rule 21A
 - (b) Payment in the nature of gratuity in respect of past services extending over a period of not less than 5 years in accordance with the provisions of sub-rule (3) of rule 21A
 - (c) Payment in the nature of compensation from the employer or former employer at or in connection with termination of employment after continuous service of not less than 3 years or where the unexpired portion of term of employment is also not less than 3 years in accordance with the provisions of sub-rule (4) of rule 21A
 - (d) Payment in commutation of pension in accordance with the provisions of sub-rule (5) of rule 21A
2. Detailed particulars of payments referred to above may be given in Annexure I, II, IIA, III or IV, as the case may be.

Signature of the employee

VERIFICATION

I,....., do hereby declare that what is stated above is true to the best of my knowledge and belief.

Verified today, the.....day of.....19....

Place.....

Date.....

.....
Signature of the employee

ANNEXURE I

[See item 2 of Form No. 10E]

Arrear or advance salary

1. Total income (excluding salary received in arrears or advance)
2. Salary received in arrears or advance
3. Total income (as increased by salary received in arrears or advance)
[Add item 1 and item 2]
4. Tax on total income
(As per item 3)
5. Tax on total income
(As per item 1)
6. Tax on salary received in arrears or advance
(Difference of item 4 and item 5)
7. Tax computed in accordance with Table 'A'
[Brought from column 7 of Table 'A']
8. Relief under section 89(1)
(Indicate the difference between the amounts mentioned against items 6 and 7)

Table 'A'
[See item 7 of Annexure I]

| Previous year(s) | Total income of the relevant previous year | Salary received in arrears or advance relating to the relevant previous year as mentioned in column 1 | Total income (as increased by salary received in arrears or advance) of the relevant previous year mentioned in column 1 [Add columns (2) and (3)] | Tax on total income (As per column 2) | Tax on total income (As per column 4) | Difference in tax [Amount under column 6 minus amount under column 5] |
|------------------|--|---|--|---------------------------------------|---------------------------------------|---|
| | (Rs.) | (Rs.) | (Rs.) | (Rs.) | (Rs.) | (Rs.) |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

Note.—In this Table, details of salary received in arrears or advance relating to different previous years may be furnished.

ANNEXURE II
[See item 2 of Form No. 10E]

GRATUITY

**Past services extending over a period of 5 years or more but
less than 15 years**

1. Gratuity received
2. Total income (including gratuity)
3. Tax on total income mentioned against item 2
4. Average rate of tax applicable on total income
(Divide amount mentioned against item 3 by amount mentioned against item 2)
5. Tax payable on gratuity by applying the average rate of tax
(Multiply average rate of tax mentioned against item 4 with amount of gratuity mentioned against item 1)
6. Total income of two previous years immediately preceding the previous year in which gratuity is received (i)
(ii)
7. *Add*: one-half of the gratuity mentioned against item 1 in the total income of each of the two preceding previous years mentioned against item 6 (i)
(ii)
8. Tax on total income of each of the preceding previous years mentioned against item 7 (i)
(ii)
9. Average rate of tax on the total income of each of the two preceding previous years as increased by $\frac{1}{2}$ of gratuity calculated for that year as mentioned against item 7 (i)
(ii)
[Divide the amounts mentioned/against items 8(i) and 8(ii) by the amount mentioned against items 7(i) and 7(ii), respectively]
10. Average of average rates of tax mentioned against item 9
[*Add*: the averages of tax mentioned against items 9(i) and 9(ii) and divide it by 2]
11. Tax payable on gratuity by applying the average of average rates of tax
(Multiply the average against item 10 by the amount of gratuity mentioned against item 1)

12. Relief under section 89(1)

(Indicate the difference between the amounts mentioned against items 11 and 5)

ANNEXURE IIA

[See item 2 of Form No. 10E]

GRATUITY

Past services extending over a period of 15 years and more

1. Gratuity received
2. Total income (including gratuity)
3. Tax on total income mentioned against item 2
4. Average rate of tax applicable on total income
(Divide amount mentioned against item 3 by amount mentioned against item 2)
5. Tax payable on gratuity by applying the average rate of tax
(Multiply average rate of tax mentioned against item 4 with amount of gratuity mentioned against item 1)
6. Total income of three previous years immediately preceding the previous year in which gratuity is received
(i)
(ii)
(iii)
7. Add: 1/3rd of the gratuity mentioned against item 1, in the total income of each of the three preceding previous years mentioned against item 6
(i)
(ii)
(iii)
8. Tax on total income of each of the preceding previous years mentioned against item 7
(i)
(ii)
(iii)
9. Average rate of tax on the total income of each of the three preceding previous years as increased by 1/3rd of gratuity calculated for that year as mentioned against item 7
(i)
(ii)
(iii)
[Divide the amounts mentioned against items 8(i), 8(ii) and 8(iii) by the amount mentioned against items 7(i), 7(ii) and 7(iii), respectively]

10. Average of average rates of tax mentioned against item 9
[Add: the averages of tax mentioned against items 9(i) to 9(iii) and divide it by 3]
11. Tax payable on gratuity by applying the average of average rates of tax
(Multiply the average against item 10 by the amount of gratuity mentioned against item 1)
12. Relief under section 89(1)
(Indicate the difference between the amounts mentioned against items 11 and 5)

ANNEXURE III

COMPENSATION ON TERMINATION OF EMPLOYMENT

Condition: After continuous service of three years and where unexpired portion of term of employment is also not less than 3 years

1. Compensation received
2. Total income (including compensation)
3. Tax on total income mentioned against item 2
4. Average rate of tax applicable on total income
(Divide amount mentioned against item 3 by amount mentioned against item 2)
5. Tax payable on compensation by applying the average rate of tax
(Multiply average rate of tax mentioned against item 4 with amount of compensation mentioned against item 1)
6. Total income of three previous years immediately preceding the previous year in which compensation is received
 - (i)
 - (ii)
 - (iii)
7. Add: 1/3rd of the compensation mentioned against item 1 in the total income of each of the three preceding previous years mentioned against item 6
 - (i)
 - (ii)
 - (iii)
8. Tax on total income of each of the preceding previous years mentioned against item 7
 - (i)
 - (ii)
 - (iii)

9. Average rate of tax on the total income of each of the three preceding previous years as increased by 1/3rd of compensation calculated for that year as mentioned against item 7
- (i)
(ii)
(iii)
- [Divide the amount mentioned against items 8(i), 8(ii) and 8(iii) by the amount mentioned against items 7(i), 7(ii) and 7(iii), respectively]
10. Average of average rates of tax mentioned against item 9
- [Divide by three, the total of averages of tax mentioned against items 9(i) to 9(iii)]
11. Tax payable on compensation by applying the average of average rates of tax
(Multiply the average against item 10 by the amount of compensation mentioned against item 1)
12. Relief under section 89(1)
(Indicate the difference between the amounts mentioned against items 11 and 5)

ANNEXURE IV

COMMUTATION OF PENSION

1. Amount in commutation of pension received
2. Total income (including amount in commutation of pension)
3. Tax on total income mentioned against item 2
4. Average rate of tax applicable on total income
(Divide amount mentioned against item 3 by amount mentioned against item 2)
5. Tax payable on amount in commutation of pension by applying the average rate of tax
(Multiply average rate of tax mentioned against item 4 with amount in commutation of pension mentioned against item 1)

6. Total income of each of the three previous years immediately preceding the previous year in which amount in commutation of pension is received
 - (i)
 - (ii)
 - (iii)
7. *Add*: 1/3rd of the amount in commutation of pension mentioned against item 1 in the total income of each of the three preceding previous years mentioned against item 6
 - (i)
 - (ii)
 - (iii)
8. Tax on total income of each of the preceding previous years mentioned against item 7
 - (i)
 - (ii)
 - (iii)
9. Average rate of tax on the total income of each of the three preceding previous years as increased by 1/3rd of the amount in commutation of pension calculated for that year as mentioned against item 7
 - (i)
 - (ii)
 - (iii)

[Divide the amount mentioned against items 8(i), 8(ii) and 8(iii) by the amount mentioned against items 7(i), 7(ii) and 7(iii) respectively]
10. Average of average rates of tax mentioned against item 9

[Divide by three, the total of averages of tax mentioned against items 9(i) to 9(iii)]
11. Tax payable on amount in commutation of pension by applying the average of average rates of tax

[Multiply the average against item 10 by the amount in commutation of pension mentioned against item 1)
12. Relief under section 89(1)

[Indicate the difference between the amounts mentioned against items 11 and 5]

Page 5608: new Form No. 12B and Form No. 12C:

After Form No. 12A, *add*,—

“The following Form No. 12B and Form No. 12C have been inserted by the Income-tax (Eighth Amendment) Rules, 1987 [Notification No. SO 963(E), dated 29th October, 1987], namely:—

FORM NO. 12B

[See rule 26A]

Form for furnishing details of income under section 192(2) for the year ending 31st March, 19.....

Name and address of the employee.....
 Permanent Account No.....
 Residential status.....

| | |
|----|---|
| 1 | Serial Number |
| 2 | Name and address of the employer(s) |
| 3 | TAN of the employer(s) as allotted by the ITO |
| 4 | Permanent Account Number of the employer(s) |
| 5 | Period of employment |
| 6 | Total amount of salary excluding amounts required to be shown in columns 7 and 8 |
| 7 | Total amount of house rent allowance, conveyance allowance and other allowances to the extent chargeable to tax [see, section 10(13A) read with rule 2A and section 10(14)] |
| 8 | Value of perquisites and amount of accretion to employees provident fund account (Give details in the Annexure) |
| 9 | Total of columns 6, 7 and 8 |
| 10 | Amount deducted in respect of life insurance premium, provident fund contribution, etc., to which section 80C applies (Give details) |
| 11 | Total amount of tax deducted during the year (Enclose certificate issued under section 203) |
| 12 | Remarks |

Particulars of salary as defined in section 17, paid or due to be paid to the employee during the year

.....
 Signature of the employee

VERIFICATION

I,, do hereby declare that what is stated above is true to the best of my knowledge and belief.

Verified today, the day of 19

Place

.....
Signature of the employee

ANNEXURE

[See column 8 of Form No. 12B]

Particulars of value of perquisites and amount of accretion to employee's provident fund account

Name and address of the employee

Period: Year ending 31st March, 19

Permanent Account No.

Value of rent-free accommodation or value of any concession in rent for the accommodation provided by the employer (give basis of computation)
[See rules 3(a) and 3(b)]

| Name of the employee | | TAN/PAN of the employer | | Where accommodation is furnished | | | | Where accommodation is unfurnished | |
|----------------------|---|------------------------------------|--|--|--|--------------------------|-----------------------------------|---|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | |
| | | Where accommodation is unfurnished | Value as if accommodation is unfurnished | Cost of furniture (including television sets, radio sets, refrigerators, other household appliances and airconditioning plant or equipment) or hire charges, if hired from a third party | Perquisite value of furniture (10% of column 5) or actual hire charges payable | Total of columns 4 and 6 | Rent if any, paid by the employee | Value of perquisite (column 3 minus column 8 or column 7 minus column 8 as may be applicable) | |

ANNEXURE (Contd.)

| | |
|---|----|
| Whether any conveyance has been provided by the employer free or at a concessional rate or where the employee is allowed the use of one or more motor cars owned or hired by the employer, estimated value of perquisite (give details) [See rule 3(c)] | 10 |
| Remuneration paid by employer for domestic and/or personal services provided to the employee (give details) [See rule 8(g)] | 11 |
| Value of free or concessional passages on home leave and other travelling to the extent chargeable to tax (give details) [See rule 2B read with section 10(5)(ii)] | 12 |
| Estimated value of any other benefit or amenity provided by the employer, free of cost or at concessional rate not included in the preceding columns (give details), e.g., supply of gas, electricity or water for household consumption, free educational facilities, transport for family, etc. [See rules 3(d), 3(e) and 3(f)] | 13 |
| Employer's contribution to recognised provident fund in excess of 10% of the employee's salary [See Schedule IV, Part A] | 14 |
| Interest credited to the assessee's account in recognised provident fund in excess of the rate fixed by the Central Government [See Schedule IV, Part A] | 15 |
| Total of columns 9 to 15 carried to column 8 of Form No. 12B | 16 |

.....
Signature of the employee

FORM NO. 12C

{See rule 26B}

**Form for sending particulars of income under section 192(2B)
for the year ending 31st March, 19.....**

1. Name and address of the employee
2. Permanent Account Number
3. Residential status
4. Particulars of income (not being loss) under any head other than "Salaries" received in the financial year

| | |
|---|---------|
| (i) Interest on securities | Rs..... |
| (ii) Income from house property | Rs..... |
| (iii) Profits and gains of business or profession | Rs..... |
| (iv) Capital gains | Rs..... |
| (v) Income from other sources | |
| (a) Dividends | Rs..... |
| (b) Interest | Rs..... |
| (c) Other incomes | |
| (specify) | Rs..... |
| Total: Rs..... | |
5. Aggregate of sub-items (i) to (v) of item 4
6. Tax deducted at source [Enclose certificate(s) issued under section 203]

Place.....

Date.....

.....
Signature of the employee

VERIFICATION

I,, do hereby declare that what is stated above is true to the best of my knowledge and belief.

Verified today, the.....day of.....19....

Place.....

Date.....

.....
Signature of the employee'."

Pages 5687-5689: Form No. 35:

Form No. 35 of the Income-tax Rules, 1962, has been amended by the Income-tax (Ninth Amendment) Rules, 1986 [Notification No. SO 702(E), dated 1st October, 1986], as under:—

- (i) before the column beginning with the words "Address to" and ending with the words "to the appellant", the following column has been inserted, namely:—

"Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Appellate Assistant Commissioner or Commissioner (Appeals), give the details as to the—

- (a) Appellate Assistant Commissioner or Commissioner (Appeals), with whom the appeal is pending;
 - (b) assessment year in connection with which the appeal has been preferred;
 - (c) Income-tax Officer passing the order appealed against;
 - (d) section and sub-section of the Act, under which the Income-tax Officer passed the order appealed against and the date of such order";
- (ii) in the Notes, after item 6, the following item has been inserted, namely:—

"7. If appeals are pending in relation to more than one assessment year, separate particulars in respect of each assessment year may be given.".

Pages 5689-5692: Form No. 36:

Form No. 36 has been amended by the Income-tax (Ninth Amendment) Rules, 1986 [Notification No. SO 702(E), dated 1st October, 1986], as under:—

'In Notes to Form No. 36, for item 1, the following item has been substituted, namely:—

"1. The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Income-tax Officer, two copies of the grounds of appeal before the first appellate authority, two copies of the statement of facts, if any, filed before the said appellate authority, and also—

- (a) in the case of an appeal against an order levying penalty, two copies of the relevant assessment order;
- (b) in the case of an appeal against an order under section 143(3), read with section 144A, two copies of the directions of the Inspecting Assistant Commissioner under section 144A;
- (c) in the case of an appeal against an order under section 143(3) read with section 144B, two copies of the draft assessment order and two copies of the directions of the Inspecting Assistant Commissioner under section 144B;
- (d) in the case of an appeal against an order under section 143 read with section 147, two copies of the original assessment order, if any.".

Page 5739: new Form No. 49B:

After Form No. 49A, the following Form No. 49B has been inserted by the Income-tax (Fifth Amendment) Rules, 1987 [Notification No. SO 769(E), dated 12th August, 1987], as under:—

"FORM NO. 49B

[See rule 114A]

**Form of application for allotment of tax deduction
account number under section 203A**

To

The Income-tax Officer,

.....

Sir,

Whereas I/we am/are liable to deduct tax in accordance with Chapter XVII under the heading 'B.—Deduction at source' of the Income-tax Act, 1961;

And whereas no tax deduction account number has been allotted to me/us;

I/We hereby request that a tax deduction account number be allotted to me/us;

I/We give below the necessary particulars:—

1. Full name and address
2. Status (whether individual, HUF, company, etc.)
3. If an individual—
 - (a) name of father (or husband)
 - (b) age
4. If firm/HUF/AOP/BOI/Company, the names and addresses of partners/members/directors.
5. Source(s) of income.
6. Particulars of business, if any:

Name

Address

Nature of
business

(i) Head Office

(ii) Branch(es)

7. Date on which the tax was last deducted in accordance with Chapter XVII under the heading 'B.—Deduction at source' of the Income-tax Act, 1961.
8. The nature of payments from which tax has been or will be deducted.
9. Whether permanent account number has been allotted or not, if so, state the number.

.....

Signed
Applicant

Verification

I/We,.....in my/our capacity as.....
(name) (designation)

do hereby declare that what is stated above is true to the best of my/our
information and belief.

Verified today this the.....day of.....19....at.....
(place)

.....

Signed
Applicant."

Page 5804: IT(AT) Rules, 1963:

After serial No. 11, *add*,—

- “12. The Income-tax (Appellate Tribunal) Amendment Rules, 1987 [Notification No. F. 71-Ad (AT)/84, dated 6-7-1987] ... (1987) 167 ITR (St.) 78”.

Pages 5804-5805: rule 2 [IT(AT) Rules, 1963]:

Rule 2 has been amended by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

- ‘(a) in clause (iii), after the word and punctuation mark “President,” and before the words “Vice-President”, the words “Senior Vice-President” have been inserted;
- (b) in clause (vii), the punctuation mark “;” appearing at the end thereof has been deleted and thereafter has been added the following words and punctuation mark, namely:—
“and includes a Deputy Registrar and Assistant Registrar where the context so requires;”;
- (c) the existing clause (ix) and clause (x) have been renumbered as clause “(x)” and clause “(xi)” respectively and the following has been inserted as clause (ix), namely:—
“(ix) ‘Senior Vice-President’ means the Senior Vice-President of the Tribunal.”’.

Page 5805: rule 3 [IT(AT) Rules, 1963]:

For the existing rule 3, the following rule 3 has been substituted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“A Bench shall hold its sittings at its headquarters or at such other place or places as may be authorised by the President.”.

Page 5805: rule 4 [IT(AT) Rules, 1963]:

For the existing rule 4, the following rule 4 has been substituted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“Where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the Senior Vice-President/Vice-President of the concerned zone or, in his absence, the seniormost Member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other.”.

Page 5807: rule 9 [IT(AT) Rules, 1963]:

After rule 9(3), the following *Explanation* has been inserted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“*Explanation.*—For the purpose of this rule, ‘certified copy’ will include the copy which was originally supplied to the appellant as well as a photostat copy thereof duly authenticated by the appellant or his authorised representative as a true copy.”.

Page 5810: rules 24 and 25 [IT(AT) Rules, 1963]:

For the existing rules 24 and 25, the following rules 24 and 25 have been substituted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“24. Hearing of appeal ex parte for default by the appellant.—Where on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the *ex parte* order and restoring the appeal.

25. Hearing of appeal ex parte for default by the respondent.—Where, on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant appears and the respondent does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the appellant.”.

Page 5811: rule 34 [IT(AT) Rules, 1963]:

Rule 34 has been amended by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, by inserting the words “Senior Vice-President” after the words “Vice-President” and before the word “or”.

Page 5813: rule 40 [IT(AT) Rules, 1963]:

For the existing rule 40, the following rule 40 has been substituted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“40. The Bench which heard the appeal giving rise to the application shall hear it unless the President, the Senior Vice-President or the Vice-President, as the case may be, directs otherwise.”.

Page 5814: rule 47 [IT(AT) Rules, 1963]:

For the existing rule 47, the following rule 47 has been substituted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“47. Where a requisition is received from the High Court under sub-section (2) of section 256, or where the case is referred back under section 258, it shall be dealt with by the Bench referred to in rule 40 unless otherwise directed by the President or the Senior Vice-President or the Vice-President, as the case may be.”.

Page 5814: rule 48 [IT(AT) Rules, 1963]:

For the existing rule 48, the following rule 48 has been substituted by the Income-tax (Appellate Tribunal) Amendment Rules, 1987, with effect from 1st August, 1987, as under:—

“48. When a copy of the judgment of the High Court is received by the Tribunal under sub-section (1) of section 260, it shall be sent to the Bench referred to in rule 40, or any other Bench as directed by the President, the Senior Vice-President or the Vice-President, for such orders as may be necessary.”.

Page 5853: section 10 [CDS Act]:

Before line 11 from bottom, add,—

“Section 10 is not unconstitutional.—The provisions of section 10 of the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974, imposing penalty on assesseees for failure to make the deposits within time or for making short payment without reasonable cause are not arbitrary, unjust or unconstitutional because the provisions imposed no absolute penalty and also provided for notice and hearing before imposition of penalty [*P. Subrahmanyam v ITO*, (1987) 165 ITR 409, 410 (AP)].”.

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